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749458

Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 680)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 658

PACKARD MOTOR CAR COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 30, 1946.

CERTIORARI GRANTED DECEMBER 9, 1946.

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In the

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

PACKARD MOTOR CAR COMPANY,
Respondent.

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

(Filed Dec. 18, 1945.)

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U. S. C. § 151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, Packard Motor Car Company, Detroit, Michigan, and its officers, agents, successors, and assigns. The proceedings resulting in said order are known upon the records of the Board as In the Matters of Packard Motor Car Company and Foreman's Association of America, the same being known as Cases Nos. 7-R-1884, and 7-C-1452, respectively.

In support of this petition, the Board respectfully shows:

(1) Respondent is a Michigan corporation engaged in business in the State of Michigan, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board on December 6, 1945, duly stated its findings of fact, conclusions of law, and issued an order directed to the respondent, and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

ORDER.

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Packard Motor Car Company, Detroit, Michigan, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Foreman's Association of America, as the exclusive representative of all general foremen, foremen, assistant foremen, and special assignment men employed by the respondent at its plants in Detroit, Michigan;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its supervisory employees in the exercise of the right to self-organization, to form, join, assist, or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Foreman's Association of America as the exclusive representative of all general foremen, foremen, assistant foremen, and special assignment men employed by the respondent at its plants in Detroit, Michigan, in re-

spect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post at its plants in Detroit, Michigan, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(c) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith."

(3) On December 6, 1945, the Board's Decision and Order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to respondent's counsel.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said

order of the Board and requiring respondent, and its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD,
By /s/ A. NORMAN SOMERS,
Assistant General Counsel.

Dated at Washington, D. C.,
this 14th day of December 1945.

District of Columbia, ss:—

A. Norman Somers, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

Subscribed and sworn to before me this 14th day of December 1945.

/s/ JOHN E. LAWYER,
(Seal) Notary Public, District of Columbia.

My Commission Expires August 14, 1949.

"APPENDIX A."

Notice to All Employees

Pursuant To

A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not refuse to bargain with Foreman's Association of America as the exclusive representative of our supervisory employees in the bargaining unit described herein.

We Will Not engage in any like or related acts or conduct interfering with, restraining, or coercing our supervisory employees in the exercise of their right to self-organization, to form, join, assist, or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. All our supervisory employees are free to become or remain members of the above-named union.

We Will bargain collectively upon request with the above-named union as the exclusive representative of all supervisory employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment. The bargaining unit is:

All general foremen, foremen, assistant foremen, and special assignment men employed at the Detroit, Michigan, plants.

PACKARD MOTOR CAR COMPANY,
(Employer),

By .....
(Representative) (Title).

Dated .....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

BOARD'S DESIGNATION.

(Filed Dec. 27, 1945.)

Comes now the National Labor Relations Board, petitioner herein, by its Assistant General Counsel, and pursuant to Rule 15 (5) of this Court files this designation of the portions of the transcript of record herein to be contained in the printed record:

1. Petition for enforcement, any response filed thereto, and this designation of record.

2. Certificate of the National Labor Relations Board, together with items 9, 10 and 17 thereof.

3. The entire stenographic transcript of testimony in Case No. 7-R-1884, including the entire stenographic transcript of oral argument held before the Board on February 27, 1945.

4. The following exhibits introduced in evidence in Case No. 7-R-1884:

Board Exhibits Nos. 1, 2, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22.

Petitioner's Exhibits Nos. 1, 2, 5, 6, 7, 8, 9, 12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36, 37, 38, 39, 41, 43, 44, 45.

Company Exhibits Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 24, 25, 31, 32, 42, 43, 44, 45.

5. The entire stenographic transcript of testimony in Case No. 7-C-1452.

6. The following exhibits introduced in evidence in Case No. 7-C-1452:

Board Exhibits Nos. 1, 2, 3, 5, 6, 11, 12, 13, 14, 15, 16, 17, 18.

Respondent's Exhibits Nos. 1, 2, 3, 4.

Dated at Washington, D. C.
this 20th day of December 1945.

/s/ A. NORMAN SOMERS,
Assistant General Counsel,
National Labor Relations Board.

RESPONDENT'S COUNTER DESIGNATION.

(Filed Jan. 3, 1946.)

Now comes Packard Motor Car Company, a Michigan corporation, Respondent herein, by its attorneys, and pursuant to Rule 15 (5) of this Court files this Counterdesignation of additional portions of the transcript of the record herein to be contained in the printed record:

(1) The following exhibits introduced in evidence in Case No. 7-R-1884:

Petitioner's Exhibit No. 3—insert Articles I, II, III, IV, and Sections 1 and 2 of Article V.

Petitioner's Exhibit No. 4—insert Preamble, Articles I, II, III, IV and Sections 1 and 2 of Article V.

Company Exhibits Nos. 22 to 22j, inclusive, 23 (a) to 23 (i), inclusive, 28, 37, 38, 40, 46, 47, 47a, 47b (print only Section 29 of this exhibit 47b which is the Michigan Unemployment Compensation Act, Act 1 of Public Acts of Michigan Ex. Sess. 1936 as amended, Mich. Stat. Ann. Sec. 17.501 et seq.), that portion of Exhibits 49c, 49d, 49e, 49g, 49h, 49j, 49l, 49n, 49o, 49p, 49t, 49u, 49v, 49w, 49z, 49AA, 49CC, 49DD, 49EE, 49FF, 49GG, 49HH, 49II, 49JJ, 49KK designated and marked in said booklet exhibits of the Radio Addresses of Robert H. Keyes, President of Foreman's Association of America.

(2) The following exhibit introduced in Case No. 7-C-1452:

Board Exhibit No. 10.

Dated: Detroit, Michigan,
January 2, 1946.

(sgd.) HENRY E. BODMAN,
(sgd.) LOUIS F. DAHLING,
BODMAN, LONGLEY, BOGLE,
MIDDLETON & ARMSTRONG,
Attorneys for Packard Motor Car Company.

Certificate of National Labor Relations Board

BOARD'S COUNTER DESIGNATION.

(Filed Jan. 7, 1946.)

Comes now the National Labor Relations Board, petitioner herein, by its Assistant General Counsel, and pursuant to Rule 15 (5) of this Court files the Counter Designation of additional portions of the transcript of the record herein to be contained in the printed record:

Those portions of Company Exhibits Nos. 49A-49MM, introduced in Case No. 7-R-1884, not heretofore designated by respondent.

/s/ A. NORMAN SOMERS,
Assistant General Counsel.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD.

(Signed December 14, 1945.)

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 3, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in the proceedings had before said Board entitled, In the Matters of Packard Motor Car Company and Foreman's Association of America, the same being Cases Nos. 7-R-1884 and 7-C-1452, respectively, before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceedings was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

7-R-1884.

(1) Copy of order designating Samuel H. Jaffee Trial Examiner for the National Labor Relations Board, dated December 18, 1944.

(2) Stenographic transcript of testimony held before Samuel H. Jaffee, Trial Examiner for the National Labor Relations Board, on December 18, 1944, through January 4, 1945, together with all exhibits introduced in evidence.

(3) Copy of respondent's telegram, dated January 4, 1945, requesting an extension of time for filing of briefs and for oral argument.

(4) Copy of letter dated January 6, 1945, granting an extension of time for filing of briefs.

(5) Copy of motions for correction of errors in transcript.

(6) Copy of letter to all parties giving them until January 22 for filing objections to motions for corrections of errors.

(7) Copy of respondent's telegram, dated January 1945, requesting further extension of time for filing briefs.

(8) Copy of telegram to all parties, dated January 20, 1945, granting further extension of time for filing of briefs.

(9) Copy of notice of hearing for purpose of oral argument, dated February 12, 1945.

(10) Copy of order correcting record, dated March 26, 1945.

7-C-1452.

(11) Copy of order designating Howard Myers Trial Examiner for the National Labor Relations Board, dated July 9, 1945.

(12) Stenographic transcript of testimony held before

Trial Examiner Myers on July 9, 1945, together with all exhibits introduced in evidence.

(13) Copy of the Intermediate Report of Trial Examiner Myers, dated July 18, 1945 (annexed to item 17 hereof).

(14) Copy of order transferring the case to the Board, dated July 20, 1945.

(15) Copy of respondent's exceptions to the Intermediate Report.

(16) Copy of Union's answer to respondent's exceptions to the Intermediate Report.

(17) Copy of Decision and Order issued by the National Labor Relations Board December 6, 1945, with annexed Intermediate Report, together with affidavit of service thereof.

In Testimony Whereof, the Chief of the Order Section of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 14th day of December 1945.

JOHN E. LAWYER,
Chief, Order Section,
National Labor Relations Board.

(Seal)

Notice of Hearing

CASE NO. 7-R-1884.

NATIONAL LABOR RELATIONS BOARD

WASHINGTON, D. C.

In the Matter of PACKARD MOTOR CAR COMPANY and FOREMAN'S ASSOCIATION OF AMERICA (Independent).	Case No. 7-R-1884.

NOTICE OF HEARING.

(Dated February 12, 1945.)

Please Take Notice that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Tuesday, February 27, 1945, at 10:30 a. m., or as soon thereafter as the Board may hear you, in the Hearing Room at 815 Connecticut Avenue Northwest, Washington, D. C., for the purpose of oral argument in the above-entitled matter. Argument will be limited to one-half hour for each party, and you are hereby advised that in view of the Board's docket no request for additional time made at the hearing will be granted.

You may appear and be heard if you so desire.

Should the party requesting oral argument decide not to appear, such party must immediately notify the Board and all other parties. This is necessary in order to avoid serious inconvenience and expense to other parties.

Dated, Washington, D. C., February 12, 1945.

JOHN E. LAWYER,
Chief, Order Section.

ORDER CORRECTING RECORD.

(Dated March 26, 1945.)

Following a hearing before a Trial Examiner in the above-entitled proceeding, the Company and the Association filed motions for the correction of certain errors in the record. Neither party has objected to the corrections proposed by the other.

It Is Hereby Ordered that the record be corrected in accordance with the following list:[1]

Page	Line	Now Reads	Corrections
16	18	1943,	1943, if
	20		Delete "and"
17	2		Delete "either"
26	25	enforce	force
27	1		Add "inference" to end of line
32	16	to that	to on the ground that
37	5	their	our
37-A	6	yes	no
37	7	their	our
39	7	"Foremen's"	"Foreman's"
42	24	Pratt Whitney	Pratt and Whitney
46	1	have	has
46	2	"	"
49	3	"if that is"	"if that was"
49	22	those 3,700	and those 3,700
50	9	"Roush"	"Rausch"
52	13	"	"
52	16	"	"
52	23	wages, classifications	wages and classifications

[1] The corrections ordered made herein are in addition to a list of corrections agreed on at the hearing and introduced in evidence as Board Exhibit #22.

Order Correcting Record

Page	Line	Now Reads	Corrections
59	1	liberaility	liberality
59	15	their	our
67	15	Labor Relations Board	War Labor Board
74	3	May 20	May 9
78	21	it all	it is all
101	14	fair	there
121	24	object because	object to each question because
128	24	December 1	December 4
143	3		Delete comma
153	22	called me	called him
155	2		Strike "did"
155	10	shop	job
156	8	and files	with files
160	15	assume	assumed
165	11	management	members
173	10	thought the	thought was the
173	11		Delete "was"
179	25	grind	grinder
180	1	"	"
192	25	you	your
206	20	have	had
207	5	I didn't want	and I didn't want
216	4		Delete "not"
225	25	general foremen to general	foremen to general
225	25	inclusive	is inclusive
260	22	were having	was having
271	10	information	statement
291	6	powers	cars
315	18	C. I. O.	U. A. W.-C. I. O.

Order Correcting Record

Page	Line	Now Reads	Corrections
316	14		Add "toward" to end of line
317	18	"Yes"	"No"
322	24		Strike "don't"
339	9		Add "and" to end of lin
339	[illegible]	of Act	of the Act
348	9	character, that	character-that
	10	denoting its foremen from general back	denoting general foremen back
369	21		Delete "both"-add "and" to end of line
372	24	They	Q. They
372	25		Insert "No."
416	1		Delete "solely"
416	1	"slack"	"slackness"
419	5	line,	line?
	6		Delete "as I take it?"
456	25	"you"	"your"
560	21	airplane	airplanes
636	5	Dayling	Dahling
649	18	Dowling	Dahling
683	4	Bowles	"Bolds"
701	14	reinstantment	reinstatement
712	12	organizational	organization of
728	22	"Beardsmore"	Beardmore
795	17	cards	dice
827	12	mised	misleading
831	4	will not	may
915	1	that department	to that department
990	9	I got	I have got
1014	1	Deisinger	Deislinger

Order Correcting Record

Page	Line	Now Reads	Corrections
1034	19–20		Delete line 19 and word "Department" in line 20
1035	20		delete "the point of"
1043	10		delete "you nine"
1061	11	Deisinger	Deislinger
1070	1	"	"
1115	19	"	"
1115	20	"	"
1116	4	"	"
1116	13	"	"
1122	16	"	"
1122	24	"	"
1123	3	"	"
1123	7	"	"
1130	14	Q. Was the	Q. The
	14	tools that	tools—that
1145	1	through	to
1145	21	were	are
1147	2	and will	and we will
1159	25	accurte	accurate
1204	2	this	the petitioner's
	4		Delete "part of"
1341	1	the interim	that
	3		Delete "which would come in the complete list"
1344	3	from	by
1390	23		Delete "it"
	24	with automobile	other
1391	1	automobile	ordinary

Order Correcting Record

Page	Line	Now Reads	Corrections
1406	2		Delete "during the model changes that"
	3	were made during the year oftener than once a year?	during the year?
1449	4	Pazkowsky	Patzkowsky
1450	4	MacAuley	MaCaulay
	8	MacAuley	Macaulay
	18	sends	becomes
1453	13	35	Exhibit 35
	15	tests	taps
1453	23	MacAuley	Macaulay
1469	21	did not substantially carry	substantially carried
1479	7	for	from
	20	recommendation, or	recommendation?
			Delete line
1480	25	We	Q. We
1488	22	another	one
	23	this particular	another
	24	department all right	department?
1503	25	each	ink
1504	6	"	"
1516	1		Delete "of"
	6	what is	what was
1518	14	while	for
1524	15	"invariably	"invariably"
1536	24	more than	more important than

Order Correcting Record

Page	Line	Now Reads	Corrections
1539	10		Delete comma
	11	responsibility to himself	Responsibility to himself
	11	heading, I	heading—I
	13		Delete "Did you?"
1541	16	leaders	leader
1552	17	processors sent	processes provided
1556	14		Delete "small"
1565	23	does say also on	does
	24		Delete line
1567	15		Delete "what."
1569	12	Packards?	Packard?
1576	18	suppose	presume
1603	23		Delete "which"
1644	6		Delete whole line
	7	what	Q. what
1645	10	decided	divided
1674-A	10	you going	you are going
1696	19	are	care
1708	3	but	and
1713	8	Redirect	Direct
1722	11	lost	lose
1723	16	Redirect	Direct
1746	13	Recross	Cross
1748	10	ain	train
1756	7	maching	machining
1773	9	Redirect	Direct
1783	2	Recross	Cross
1786	2	immaterial	immaterial matter,
	4	competent	comparable
1803	4		Put name Louis F. Dahling under heading "Witness" and "1809" under heading "Direct"

Order Correcting Record

Page	Line	Now Reads	Corrections
1805	10	is the	is to determine the
	12	have been	being statements
	13	has	have
1817	4	Court.	Board.
1818	8	be concerned	return
1819	19	direct from	to continue the
1823	28	just like	just not like
1825	2	the	one
1827	24	record	records
1833	8	say would	say I would

Dated, Washington, D. C., March 26, 1945.

By direction of the Board:

CLARA M. MARTIN,
Acting Chief, Order Section.

CASE NO. 7-C-1452.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Trial Examining Division
Washington, D. C.

In the Matter of PACKARD MOTOR CAR COMPANY and FOREMAN'S ASSOCIATION OF AMERICA.	Case No. 7-C-1452.

Messrs. David Karasick and David Citrin, for the Board.

Mr. Louis F. Dahling, of Detroit, Mich., for the respondent.

Mr. Walter M. Nelson, of Detroit, Mich., for the Union.

INTERMEDIATE REPORT.

(Dated July 18, 1945.)

STATEMENT OF THE CASE.

Upon a charge duly filed on June 8, 1945, by Foreman's Association of America, an unaffiliated organization, herein called the Union, the National Labor Relations Board, herein called the Board, by its Regional Director for the Seventh Region (Detroit, Michigan), issued its complaint on June 28, 1945, against Packard Motor Car Company, Detroit, Michigan, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the mean-

ing of Section 8 (1) and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint and the charge, with notice of hearing thereon, were duly served on the respondent and the Union.

With respect to the unfair labor practices, the complaint alleged in substance that (1) on March 26, 1945, the Board in its Decision and Direction of Election in Case No. 7-R-1884[1] found that all general foremen, foremen, assistant foremen, and special assignment men employed by the respondent at its plants in Detroit, Michigan, constituted a unit for the purposes of collective bargaining; (2) on April 28, 1945, the Board in its Certification of Representatives in the same case, certified the Union as the exclusive representative of all the employees in the said unit for the purposes of collective bargaining; and that the Union is still such representative; (3) that on May 18, 1945, although requested to bargain collectively by the Union, the respondent refused to do so; and (4) by the foregoing acts and conduct, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On July 6, 1945, the respondent duly filed an answer denying the commission of the alleged unfair labor practices. The answer admitted, however, the allegations of the complaint as to the corporate existence of the respondent and the nature, character, and extent of the business transacted by it, and the allegation that it refused to bargain collectively with the Union although the Union had requested it to do so. By way of affirmative defense, the answer asserted that the Board erred in its findings in Case No. 7-R-1884 as to the appropriateness of the unit in question for the reason, inter alia, that the Board had no power, authority or jurisdiction to hold or conduct any hearing in that case, or to issue any decision or direction, or to order the holding of any election, or to issue any certification or order thereon, and that therefore all findings, de-

[1] Matter of Packard Motor Car Company and Foreman's Association of America, 61 N. L. R. B. No. 3

terminations, directions, and orders therein are unconstitutional without legal force or effect, wholly void, and not binding on the respondent.

Pursuant to notice, a hearing was held on July 9, 1945, at Detroit, Michigan, before Howard Myers, the undersigned Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, and the Union were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. Before the taking of any evidence, counsel for the respondent moved to dismiss the complaint on the grounds that (1) the persons who compose the unit alleged to be appropriate are not employees within the meaning of the Act; (2) the alleged unit is inappropriate; (3) the Board has no jurisdiction over the subject matter alleged in the complaint; (4) the Board's action, by proceeding herein, is an illegal, unwarranted, arbitrary and unreasonable interference with the rights of the respondent and therefore the Board by proceeding herein is violating the respondent's constitutional rights; (5) the Board may not in this proceeding lawfully order the respondent to bargain collectively with the Union because to do so, the Board would be proceeding contrary to the Act, abusing its discretion, and committing acts detrimental to public interest; (6) the Board has no jurisdiction, power, or right to proceed with Case No. 7-R-1884 and therefore it should not proceed with the present case because this is the outgrowth of the former proceeding; (7) the findings, certification, decisions, and directions issued in Case No. 7-R-1884 are illegal, unconstitutional, null and void, and of no effect and therefore they do not afford a basis for the filing of the complaint in the present proceeding; and (8) the findings, certificate, decisions, and directions issued in Case No. 7-R-1884 are contrary to the evidence submitted therein, beyond the limits of the Board's discretion, an abuse of the Board's discretion, and contrary to the provisions of the Act and therefore they are detrimental to public interest. The motion was denied with leave to renew. At the close of the Board's case,

Board's counsel moved to conform the complaint to the proof. The motion was granted without objection. The respondent's counsel renewed the motion which he made at the opening of the hearing to dismiss the complaint. The motion was denied with leave to renew. At the conclusion of the hearing, Board's counsel moved to conform the complaint to the proof and the respondent's counsel moved to conform the answer to the proof. Both motions were granted without objection.[2] The respondent's counsel then renewed the motion which he made at the opening of the hearing and at the end of the Board's case to dismiss the complaint. Decision thereon was reserved. The motion is hereby denied.

Upon the entire record in the case, including the record in Case No. 7-R-1884,[3] the undersigned makes, in addition to the above, the following:

FINDINGS OF FACT.

I. The business of the respondent.

Packard Motor Car Company is a Michigan corporation with its principal office and place of business in Detroit, Michigan. Prior to 1941, the respondent was engaged at its Detroit plants in the manufacture and sale of automobiles. Since 1941, the respondent's manufacturing facilities have been converted to the manufacture of munitions for Army and Navy Ordnance and the respondent is at the present time engaged almost entirely in war production. The respondent annually purchases raw materials valued in excess of $5,000,000, of which 50 percent is obtained from sources outside the State of Michigan and is shipped to the respondent's plants located in the State of Michigan. The respondent's annual sales of finished products exceed $5,000,000, of which 90 percent represents sales of

[2] By error, the stenographic transcript does not show that the respondent's motion was granted. It is hereby ordered that the transcript be deemed corrected accordingly.

[3] It was stipulated at the hearing that the record in Case No. 7-R-1884 (including the oral argument before the Board) be included herein.

such products shipped from the Detroit, Michigan, plants of the respondent to points outside the State of Michigan.

The respondent admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. The organization involved.

Foreman's Association of America is an unaffiliated labor organization admitting to membership supervisory employees of the respondent.

III. The unfair labor practices.

The refusal to bargain.

1. The appropriate unit and representation by the Union of a majority therein.

On March 26, 1945, the Board issued its Decision and Direction of Election in Case No. 7-R-1884 (61 N. L. R. B., No. 3), in which it found that all general foremen, foremen, assistant foremen, and special assignment men employed by the respondent at its plants in Detroit, Michigan, constituted a unit appropriate for the purposes of collective bargaining. On April 17, 1945, an election was held pursuant to the aforesaid Direction of Election. According to the Tally of Ballots certified to by representatives of the respondent and the Union, of the 1315 eligible voters, 666 votes were cast for the Union, 435 against, and 155 votes were challenged. No objections to the voting or to the conduct of the election were filed by any of the parties. On April 28, 1945, the Board in its Certification of Representatives, certified the Union as the representative of the employees in the aforesaid unit for the purposes of collective bargaining.

The respondent contests the appropriativeness of the unit, referred to above, and hence the subsequent certification of the Union therefor. No additional evidence to support the respondent's contention was introduced in the present hearing except the following: (1) a copy of a

memorandum issued by Mr. Sam Sponseller, C. I. O. Cleveland Regional Director, in which he states, among other things, that the C. I. O. has opened its membership in a certain named local to all "foremen and supervisory employees, excluding superintendents etc." and solicits membership from among those eligible to join the named local; (2) a copy of an article appearing in the May 27, 1945 issue of the Pittsburgh Press, a Pittsburgh, Pennsylvania, daily newspaper, stating that the United Steelworkers of America, an affiliate of the Congress of Industrial Organizations, plans to organize "all bosses who do not have 'hire and fire' authority"; and (3) an excerpt from the March 1, 1945 issue of "The Searchlight", the official publication of CIO-UAW, Chevrolet Local No. 69, wherein the author states that about 300 Chevrolet foremen had joined the Union herein and that the remaining foremen should join the Union without delay. The undersigned is convinced, and finds, that the evidence relied on by the respondent in this proceeding, including the evidence submitted by it in Case No. 7-R-1884, is insufficient to warrant a finding that the unit heretofore found by the Board to be appropriate is inappropriate.

The undersigned finds that all general foremen, foremen, assistant foremen, and special assignment men employed by the respondent at its plants in Detroit, Michigan, constitute, and during all the times material herein constituted, a unit appropriate for the purposes of collective bargaining. The undersigned further finds that on and after April 28, 1945, the Union was the duly designated bargaining representative of a majority of the employees in the aforesaid appropriate unit, and that, pursuant to the provisions of Section 9 (a) of the Act; the Union was on April 28, 1945, and at all times thereafter has been, and now is, the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. The refusal to bargain.

By letter dated May 2, 1945, the Union requested the respondent to fix a time and place for the purpose of commencing collective bargaining negotiations. By letter dated May 11, the respondent replied that it would meet with the Union's representatives on May 18. Instead of meeting with the Union's representatives on May 18, the respondent wrote the Union that day stating, among other things, that the respondent considered the Board's proceedings which culminated in the Board's certifying the Union as the collective bargaining representative of the respondent's general foremen, foremen, assistant foremen, and special assignment men, unconstitutional, void, and of no force or effect and therefore the respondent would not recognize the said certification nor would it bargain collectively with the Union as such representative until the issues involved had been finally determined by judicial review. It is clear from the respondent's letter and from the admissions contained in the answer filed by the respondent in this proceeding, that at all times since May 18, 1945, the respondent has not receded from its position as outlined in its letter of May 18. The undersigned accordingly finds that the respondent on May 18, 1945, and at all times thereafter, has refused to bargain collectively with the Union as the exclusive representative of its employees in the appropriate unit, and thereby has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce.

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and such of them as have been found to be unfair labor practices, tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy.

Since it has been found that the respondent has engaged in unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Since it has been found that the respondent has refused to bargain collectively with the Union as the exclusive representative of its employees in an appropriate unit, it will be recommended that the respondent, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law.

1. Foreman's Association of America, unaffiliated, is a labor organization, within the meaning of Section 2 (5) of the Act.

2. All general foremen, foremen, assistant foremen, and special assignment men, employed by the respondent at its plants in Detroit, Michigan, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

3. Foreman's Association of America, unaffiliated, was on April 28, 1945, and at all times thereafter has been the exclusive representative of all the employees in the aforesaid unit for the purposes of collective bargaining, within the meaning of Section 9 (a) of the Act.

4. By refusing on May 18, 1945, and at all times thereafter, to bargain collectively with Foreman's Association of America, unaffiliated, as exclusive representative of all its employees in the appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS.

Upon the basis of the above findings of fact and conclusions of law, and upon the entire record in the case, including the record in Case No. 7-R-1884, the undersigned recommends that the respondent, Packard Motor Car Company, Detroit, Michigan, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Foreman's Association of America, unaffiliated, as the exclusive representative of all of its employees in the above described appropriate unit;

(b) Engaging in like or related acts or conduct interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form labor organization, or to join or assist Foreman's Association of America, unaffiliated, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the undersigned finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with Foreman's Association of America, unaffiliated, as exclusive representative of all its employees in the above described appropriate unit and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plants in Detroit, Michigan, copies of the notice attached hereto, marked "Appendix A". Copies of said notice, to be furnished by the Regional Director of the Seventh Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for

sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Seventh Region (Detroit, Michigan), in writing, within ten (10) days from the receipt of this Intermediate Report, of what steps the respondent has taken to comply herewith.

It is further recommended that unless, on or before ten (10) days from the date of the receipt of this Intermediate Report, the respondent notifies the said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 3, as amended, effective July 12, 1944, any party or counsel for the Board may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of such statement of exceptions and/or brief, the party or counsel for the Board filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing within ten (10) days from the date of the order transferring the case to the Board.

HOWARD MYERS,
Trial Examiner.

Dated: July 18, 1945.

APPENDIX A.

Notice to All Employees

Pursuant to

the Recommendations of a Trial Examiner

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not in any manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist Foreman's Association of America or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. All our employees are free to become or remain members of this union, or any other labor organization.

We Will Bargain collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, hours of employment or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is: all general foremen, foremen, assistant foremen, and special assignment men employed at the Detroit, Michigan, plants.

PACKARD MOTOR CAR COMPANY,
(Employer),

By .....
(Representative) (Title).

Dated .....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

DECISION AND ORDER.

(Issued December 6, 1945.)

On July 18, 1945, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the respondent filed exceptions to the Intermediate Report and a supporting brief. No request for oral argument before the Board at Washington, D. C., was made by any of the parties and none was held. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the respondent's exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, save insofar as the recommendations are modified in our Order set forth below.

ORDER.

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Packard Motor Car Company, Detroit, Michigan, and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Foreman's Association of America as the exclusive representative of all general foremen, foremen, assistant foremen, and special assignment men employed by the respondent at its plants in Detroit, Michigan;

(b) Engaging in any like or related acts or conduct interfering with, restraining, or coercing its supervisory employees in the exercise of the right to self-organization, to

form, join, assist, or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with Foreman's Association of America as the exclusive representative of all general foremen, foremen, assistant foremen, and special assignment men employed by the respondent at its plants in Detroit, Michigan, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(b) Post at its plants in Detroit, Michigan, copies of the notice attached hereto, marked "Appendix A." Copies of said notice, to be furnished by the Regional Director for the Seventh Region, shall, after being duly signed by the respondent's representative, be posted by the respondent immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the respondent to insure that said notices are not altered, defaced, or covered by any other material; and

(c) Notify the Regional Director for the Seventh Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 6th day of December 1945.

PAUL M. HERZOG,
Chairman,
JOHN M. HOUSTON,
Member,
National Labor Relations Board.

(Seal)

Chairman Paul M. Herzog, concurring:[1]

The issues in this case cannot be analyzed in terms of black and white. They present a study in grey. Both company and union present their arguments in good faith; no one can be wholly right or wholly wrong in a matter of this sort. But the Board remains faced with the responsibility of deciding which is nearer right, in the light of the announced policies of the Act.

Although there has sometimes been a tendency to assume that the issue before us is whether foremen should or should not join unions, that assumption misconceives the Board's function. We are faced, instead, with the narrower question of whether, granting that many foremen have now decided that "the necessities of the situation"[2] dictate that they seek to bargain through an unaffiliated union, the Act affords them access to the orderly administrative machinery that is concededly available to rank-and-file employees. I think that it does.

The company asserts that its supervisory employees are not "employees" at all, but "employers."[3] To the extent that foremen may sometimes speak for or bind a respondent in dealing with their subordinates, because then "acting in the interest of an employer," they are "employers" within the meaning of the Act. Here, however, we are not concerned with foremen's relations with their subordinates, but with their own status vis-a-vis the company that hires, discharges and compensates **them** and that directs **their** work. In that relation the company is the employer and the foreman the employee; when they sit on opposite

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[1] Not having been a Member of the Board when the representation case was heard and decided, I have thought it only proper to set forth these views, after examining the record, the briefs and the minutes of oral argument in that earlier proceeding. **Matter of Packard Motor Car Company**, 61 N. L. R. B. 4, decided March 26, 1945. Concurrence here may be taken as agreement with the representation decision, although I might not have joined in every sentence or every metaphor. I join fully with Mr. Houston in the present order, believing that this company should bargain with the union selected by its foremen.

[2] **N. L. R. B. v. Jones & Laughlin Corporation**, 301 U. S. 1, 33.

[3] Sections 2 (2) and 2 (3).

sides of the bargaining table, their interests are momentarily adverse. This is true whether they bargain individually or collectively. The foreman is not "acting in the interest of an employer" when he seeks to improve his own working conditions; he is acting for himself. The company suggests that the same man cannot, in logic, be both employer and employee. But "the life of the law has not been logic; it has been experience."[4] High judicial authority has held that a foreman can be both employer and employee;[5] the Board, including our dissenting colleague, has always held him to be both;[6] the facts of industrial life have made him both.

All employees may ask our protection in the exercise of the rights declared in Section 7 of the Act, unless another section can be found to bar that result. One protected right is that of employees to bargain collectively through representatives of their own choosing. Because the Board, even when denying protection, has never doubted that a foreman is an "employee," the majority opinion in **Maryland Drydock** and the dissent in the **Packard** representation case were based largely upon the theory that foremen do not constitute a "unit appropriate for the purposes of collective bargaining." The theory assumes that because Congress, by Section 9 (b) of the Act, empowered the Board to determine which of several units is appropriate, "in order to insure to employees the

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[4] O. W. Holmes, **The Common Law**, p. 1.

[5] **N. L. R. B. v. Skinner & Kennedy**, 113 F. (2d) 667, at 670, where the court said, "A foreman, in his relation to his employer, is an employee, while in his relation to the laborers under him he is the representative of the employer and within the definition of Section 2 (2) of the Act * * *." These definitions in the Act "are not mutually exclusive." **N. L. R. B. v. Armour and Co.** (C. C. A. 10, Nov. 5, 1945), 17 L. R. R. 372, 373.

The fact that a man promoted to a foremanship may become an "arm of management" does not mean that he thereupon ceases to be an employee of management. This view is consistent with the familiar legal doctrine that an agent, although he must act in behalf of his principal as against third persons, does not forfeit his rights against that principal where their relations with one another are in issue.

[6] **Matter of Maryland Drydock Company**, 49 N. L. R. B. 733 (1943); **Matter of Soss Manufacturing Company**, 56 N. L. R. B. 348 (1944).

full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act," it also authorized us to find that persons who are employees belong in no unit at all. The assumption is open to question.

It seems much more probable that Congress intended Section 9 (b) to authorize the Board to group employees appropriately rather than to exclude them from coverage. The only express exclusions appear in Section 2 (3).[7] The language of Section 9 (b) is language of classification.[8] It empowers the Board to select between alternatives; we are to "decide in each case whether" employees should vote and bargain in an "employer unit, craft unit, plant unit, or subdivision thereof." It nowhere suggests that we should hold that, despite their desires, certain employees may never utilize the Act to select some representative or to bargain in any unit whatsoever.[9] Under the power to classify the Board may, and properly does, segregate supervisory employees from their subordinates, as by declining to place them in the same unit with rank-and-file employees. Here, however, we are not asked to segregate, but to ostracize. Even assuming that Section 9 (b) might

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[7] These exclusions are limited to agricultural, domestic, and family workers. Supervisory employees are not mentioned; no Member of the Board suggested their exclusion until as late as 1942.

[8] The 1935 Congressional committee hearings and reports are to the same effect.

[9] See **Matter of Bee Line, Inc.**, 6 N. Y. S. L. R. B. 686, 695 (1943):

> "The concept of appropriate unit is an affirmative one, intended to bring about the most desirable form of organization. It is not a negative concept to be used as a means of denying all bargaining rights under the Act to a given group of employees in all circumstances. Once it is determined that a group of persons are employees, they have a right under the Act and the Constitution of the State of New York to be placed in some appropriate unit—that one which will best facilitate their participation in the practice and procedure of collective bargaining."

Of course, the reference to the State Constitution is immaterial here. It might be noted that the New York Board still adheres to this view, despite a change in personnel under a different State Administration.

permit such a result,[10] that particular section certainly cannot be said to encourage it.

There are practical problems before us as well as legal ones. The company is deeply concerned at the foremen's decision to join an unaffiliated labor organization. The company's concern is as understandable as is its employees' decision. Both flow from the character of American industrial life in the 1940's. The company is troubled lest the unionization of its foremen detract from the single-minded loyalty which it considers essential to efficient mass production; the foremen have thought collective action necessary because they believe that individual bargaining has not afforded them the protection that men require in a large, inevitably depersonalized, plant. Self-interest is present on both sides, and so is fear. Fear, perhaps more than self-interest, is a ready cause of industrial strife. In the long run, collective bargaining will tend to reduce both the cause and the effect. It will provide more fertile soil for the ultimate loyalty of foremen than can the resentment that is likely to be engendered by hostile disregard of their chosen representatives.

Bargaining can only succeed, however, if responsible unions representing supervisory employees, once their legal rights are established, recognize the validity of some of management's special fears and seek to dispel them by the terms of the ultimate bargain.[11] Many of the problems arising from possible dual allegiance, which give Mr. Reilly such genuine concern, are particularly susceptible of this treatment. Such problems flow inevitably from the foremen's dual existence. They cannot be made to dis-

[10] This view as to the limited power vested in the Board under Section 9 (b) is not to be taken to mean that the Board lacks discretion to decline to proceed with a representation case upon proper cause shown. Our view of the fundamental policies of the Act may sometimes require the Board to decline, despite the danger of strikes, to make its machinery available to effectuate every choice that employees may make. See **Matter of Briggs-Indiana Corporation**, 63 N. L. R. B. 1270. Section 9 (c) of the N. L. R. A. provides that this Board "may," not that it must, investigate a question concerning representation and certify the representatives selected. This differentiates the Act from certain State statutes, such as that of New York, which contain mandatory language.

[11] See **Matter of Delparke Realty Corporation**, 6 N. Y. S. L. R. B. 907.

appear simply by telling foremen that the Wagner Act is not available to them. American management has shown such resilient genius that, once foremen's representatives lose their sense of insecurity and can adopt a policy of self-restraint, the parties will find a way to resolve their occasional conflict of interest. Government cannot resolve that conflict for them. But it can intercede to lay the groundwork for reasoned negotiation, so that that which seems anathema today may become habitual tomorrow.

It is not for this Board to determine whether supervisory employees, sensing inequality of bargaining power, should seek to better their lot by exercising the right of free association. They have already done so. In this case we need only decide whether the Act's peaceful processes are to be proffered or denied to employees who, for reasons known best to themselves, desire to act in unison through what appears to be a truly independent union.[12] In the absence of any Court decision,[13] Congressional mandate or other declaration of national policy to the contrary,[14] and in the further absence of proof that collective bargaining by supervisory employees has failed where it has been attempted,[15] it is better that a Board

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12 The fact that the Foreman's Association's interests, and therefore its actions, may sometimes coincide with those of rank-and-file employees does not suffice to convert natural sympathy into partnership. Collaboration may be relevant, but the presumption that a constitutionally autonomous organization is in fact autonomous is not so easily rebutted. Affiliation per se is not before us here, and Mr. Houston and I do not pass, one way or the other, upon its possible effect.

13 Indeed, a State Board order finding appropriate a unit of supervisors has been enforced by the courts in the test case of **New York State Labor Relations Board v. Metropolitan Life Insurance Company et al.**, 183 N. Y. Misc. 1064, affirmed by the Appellate Division, First Department, at 114 N. Y. Law Journal, p. 1075 (October, 1945). There are no contrary Federal decisions.

14 The Labor-Management Conference reached no conclusion on this subject.

15 The history of bargaining by supervisory employees in the maritime and railroad industries and in the printing and building trades establishes, at the least, that collective agreements can be made to work in practice. So also does the testimony adduced in the Packard representation case concerning the Foreman's Association's current contract with the Ford Motor Company.

The record is barren of any proof that the Packard foremen have been disloyal to the company or less efficient as supervisors because of their membership in the Association, or that such membership has operated to deprive the rank-and-file employees of their primary rights under the Act.

dedicated to encouraging the bargaining process move forward, not backward,[16] and continue to put a premium on the conference table rather than on the harsh arbitrament of industrial war. The more difficult the problem, the more important it is that the stage be set for men to sit down and reason together.

Signed at Washington, D. C., this 6th day of December, 1945.

PAUL M. HERZOG,
Chairman,
National Labor Relations Board.

Gerard D. Reilly, dissenting:

Since the respondent does not deny that it has refused to bargain with the charging labor organization in this case, the issue before us is the same one upon which we passed in our Decision and Direction of Election in case 7-R-1884,[1] the representation matter which resulted in the certification upon which the complaint in the instant proceeding is premised. The findings of the Trial Examiner to which respondent has taken exception rest almost entirely upon the evidence submitted in that preliminary phase of the case, except for three exhibits which the respondent introduced as additional support for its position.

Having set forth at some length my disagreement with the views of the majority in the representation case, I see no reason for repeating them here, since the dissenting opinion is a part of the record, other than to note that the additional documentary evidence contained in this case strengthens my inference that the charging union is not truly independent, but rather an organization whose fate is inextricably bound up with the policy of the United Automobile Workers, the CIO union which represents the rank and file employees in respondent's plant.[2] This being

[16] Two reversals in as many years are enough.

[1] Matter of Packard Motor Car Company, 61 N. L. R. B. 4.

[2] Particularly reference is made to an excerpt from the March 1, 1945, issue of "The Searchlight," an official publication of the Chevrolet Local No. 69 of the United Automobile Workers (CIO), stating that about 300 Chevrolet foremen had joined the Foreman's Association and that the rest of the foremen in that company should join this group without delay.

the case, we do have a situation here which presents a genuine question of divergent loyalties,—the conflict arising from the foreman's duty to his employer to enforce the company rules with respect to subordinate employees, and his allegiance to a union allied with one representing the interests of those very subordinates. Consequently, I am unable to agree with the view expressed in the special concurrence of the Chairman that the concerted activities of the foremen here are solely directed at improving the wages and working conditions of the foreman vis-a-vis their employer. That is of course their ultimate objective, but its attainment necessarily contemplates compromising the members of the charging organization in the discharge of the duties they were hired to perform.

If the certified organization were really independent or took steps to guarantee against future instances of collaboration, or if the certification contained safeguards which would effectively insulate its activities from the union of the rank and file, I should feel quite differently about the matter.

Signed at Washington, D. C., this 6th day of December, 1945.

GERARD D. REILLY,
Member,
National Labor Relations Board.

"APPENDIX A."

Notice to All Employees

Pursuant To

A Decision and Order

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not refuse to bargain with Foreman's Association of America as the exclusive representative of our supervisory employees in the bargaining unit described herein.

We Will Not engage in any like or related acts or conduct interfering with, restraining, or coercing our supervisory employees in the exercise of their right to self-organization, to form, join, assist, or bargain collectively through Foreman's Association of America, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection. All our supervisory employees are free to become or remain members of the above-named union.

We Will bargain collectively upon request with the above-named union as the exclusive representative of all supervisory employees in the bargaining unit described herein with respect to rates of pay, hours of employment, or other conditions of employment. The bargaining unit is:

All general foremen, foremen, assistant foremen, and special assignment men employed at the Detroit, Michigan, plants.

PACKARD MOTOR CAR COMPANY,
(Employer),

By .....
(Representative) (Title).

Dated .....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

AFFIDAVIT AS TO SERVICE.

District of Columbia, ss:

I, Mary Moss, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 6th day of December, 1945, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order [and Intermediate Report] to the following-named persons, addressed to them at the following addresses:

Foreman's Association of America
Att: Walter M. Nelson, Esquire
1438 Dime Bank Building
Detroit, Michigan

Packard Motor Car Company
Detroit, Michigan

Bodman, Longley, Bogle, Middleton and Armstrong
Att: Louis F. Dahling, Esquire
1400 Buhl Building
Detroit, Michigan

/s/ MARY MOSS.

Subscribed and sworn to before me this 6th day of December, 1945.

/s/ VINCENT THOMPSON,
Designated Agent for the National
Labor Relations Board.

TRANSCRIPT OF TESTIMONY

Case No. 7-R-1884.

Certificate.

This is to certify that the attached proceedings before the National Labor Relations Board for the Seventh Region in the matter of:

Packard Motor Car Company

and

Foreman's Association of America

Case No. 7-R-1884

Detroit, Michigan,

Monday, December 18, 1944

were had as therein appears, and that this is the original transcript thereof for the files of the Board.

ETHEL E. FISHER AND ASSOCIATES,
Official Reporters,

By ROSEMARY ORNELAS,
Field Reporter.

1* Before the

NATIONAL LABOR RELATIONS BOARD,

Seventh Region.

In the Matter of—

PACKARD MOTOR CAR COMPANY

and

FOREMAN'S ASSOCIATION OF AMERICA.

Case No. 7-R-1884.

Rooms 715-716 Federal Building,
Detroit, Michigan,
Monday, December 18, 1944.

Pursuant to notice, the above-entitled matter came on for hearing at 10 A. M.

Before:

Samuel H. Jaffee, Trial Examiner.

Appearances:

David Karasick, Esq., appearing for the National Labor Relations Board, Detroit, Michigan.

Messrs. Bodman, Longley, Bogle, Middleton and Armstrong, by Louis F. Dahling, Esq., 1400 Buhl Building, Detroit, Michigan, Appearing for the Company, and

Messrs. Beaumont, Smith and Harris, by Percy Donovan, Esq., Ford Building, Detroit, Michigan, also appearing for the Company.

Walter M. Nelson, Esq., 1438 Dime Building, Detroit, Michigan, appearing in behalf of the Petitioner.

* Inset numbers appearing at outer edge of text indicate page numbers of original stenographic transcript of testimony.

3 PROCEEDINGS.

Trial Examiner Jaffee: We will be in order, gentlemen. This is a formal hearing before the National Labor Relations Board, in the matter of Packard Motor Car Company and Foreman's Association of America, Case No. 7-R-1884. The Trial Examiner appearing for the National Labor Relations Board is Samuel H. Jaffee. It has been indicated informally off the record, prior to the start of this hearing, that the appearances will be as follows: For the Board, David Karasick; for the Company, Mr. Louis F. Dahling of Bodman, Longley, Bogle, Middleton and Armstrong, 1400 Buhl Building, Detroit, Michigan, and Percy Donovan, of Beaumont, Smith and Harris, Ford Building, Detroit, Michigan. For the Foreman's Association, Mr. Walter M. Nelson, 1438 Dime Building, Detroit, Michigan, and Robert H. Keys, 515 Barlum Tower, Detroit, Michigan.

Mr. Dahling: Mr. Albert E. Meder, of Beaumont, Smith and Harris, was supposed to appear this morning, but had other engagements. He may also appear later in this hearing.

Trial Examiner Jaffee: Very well. We will enter his appearance when he does appear.

The parties are informed that the official reporter makes the only official transcript of these proceedings. All citations in briefs and arguments must refer to the official record. After the close of the hearing, one or more of the parties may wish to have corrections made in the record. All such proposed corrections, either by way of stipulation or motion, should be forwarded to the Board in Washington instead of to the Trial Examiner inasmuch as the Trial Examiner has no power to make any rulings in connection with the case after the hearing is closed.

4

Statements of reasons in support of motions or objections should, of course, be as concise as posisble. All matters that are spoken in the hearing room are recorded by the official reporter while the hearing is in session, unless the Trial Examiner orders an off-the-record discussion. I may add that I prefer not to go off the record unless all the parties consent to it specifically or indicate it in one way or another that they do not object. In the

event, however, that any of the parties wish to make off the record remarks, requests to make such remarks should be directed to the Trial Examiner and not to the official reporter. Exceptions and objections may, upon proper request, be permitted to stand to an entire line of questioning. Automatic exceptions follow all adverse rulings. Five copies of all pleadings, including the original, submitted during the hearing are to be filed with the Trial Examiner.

You may proceed, gentlemen.

Mr. Karasick: Will you mark these papers as Board's Exhibits 1 to 12 for identification?

(Thereupon, the documents above referred to were marked Board's Exhibits Nos. 1 through 12, for identification.)

Mr. Karasick: Mr. Examiner, I have had the formal documents in this proceeding marked as Board's Exhibits 1 to 12, both inclusive, for identification. These formal documents are as follows:

Board's Exhibit 1, for identification, is the petition for certification of representatives filed in the Seventh Regional Office of the National Labor Relations Board on October 20, 1944, by Robert H. Keys, President of the Foreman's Association of America.

Board's Exhibit 2, for identification, is a Notice of Hearing issued by Frank H. Bowen, Regional Director for the Seventh Regional Office of the National Labor Relations Board on November 25, 1944.

Trial Examiner Jaffee: For hearing when?

Mr. Karasick: The Notice of Hearing sets the date of hearing as December 4, 1944.

Board's Exhibit 3, for identification, is the Trial Examiner's Statement in "R" cases, a copy of which has been served upon each of the parties to this hearing.

Mr. Donovan: What is that form number? Is it Z-1057? Did you mention that form number?

Mr. Karasick: You have received that?

Mr. Donovan: No, I have not.

Mr. Karasick: In formal service of the papers by the Board, did counsel for the Company receive this form?

Mr. Dahling: Yes, the form has been received.

Mr. Karasick: You mean, Mr. Donovan, that you have not an individual copy?

Mr. Donovan: If you have an extra copy, I would appreciate it.

Mr. Karasick: I will obtain one, yes.

Board's Exhibit 4 for identification is an affidavit as to service of Notice of Hearing, Petition and Trial Examiner's Statement in "R" cases upon each of the parties to this proceeding, together with the Return Post Office Receipts attached thereto.

Board's Exhibit 5 for identification is a letter written on the letterhead of the Packard Motor Car Company addressed to Mr. Frank H. Bowen, Regional Director of the Seventh Region, National Labor Relations Board, Detroit, Michigan, and signed by A. G. Denison, which letter contains a request on behalf of the Company that the hearing originally scheduled for December 4, 1944 be postponed to December 11, 1944.

Trial Examiner Jaffee: What is the date of that letter?

Mr. Karasick: The date of the letter is November 27,
7 1944. I might also add that a stamp appears on the face of the letter showing that it was received in the Seventh Regional Office of the National Labor Relations Board on November 29, 1944.

Board's Exhibit 6 for identification is the Notice of Postponement of Hearing issued by Frank H. Bowen, Regional Director of the Seventh Regional Office of the National Labor Relations Board on November 29, 1944, which notice postponed the hearing originally scheduled for December 4 to December 11, 1944.

Board's Exhibit 7 for identification is the Affidavit as to Service of the Notice of Postponement of the Hearing upon each of the parties to this proceeding, together with return Post Office receipts attached thereto.

Board's Exhibit 8 for identification is the Motion by counsel for petitioning Union for a continuance of the hearing from December 11 to December 26, 1944.

Mr. Donovan: What is the date of that letter?

Mr. Karasick: Which Notice or Motion is dated December 8, 1944 and was received on the same day at the Seventh Regional Office of the National Labor Relations Board.

Trial Examiner Jaffee: You say the motion was to continue from December 11 to December 26?

Mr. Karasick: That is correct.

Trial Examiner Jaffee: Motion was filed when?

8 Mr. Karasick: December 8.

Mr. Donovan: May I see that exhibit, please?

Mr. Karasick: I will show them all to you later.

Board's Exhibit 9 for identification is a Notice of Postponement of Hearing from December 8, 1944 to—I beg your pardon, from December 11 to December 18, 1944, which was issued by Frank H. Bowen, Regional Director for the Seventh Regional Office of the National Labor Relations Board on December 8, 1944.

Board's Exhibit 10 for identification is the Affidavit as to Service of the Notice of Postponement of Hearing from December 11 to December 18, 1944 upon each of the parties to this proceeding, together with return Post Office receipts attached thereto.

Board's Exhibit 11 for identification is a Notice of Change of Place of Hearing issued by Frank H. Bowen, Regional Director for the Seventh Regional Office, National Labor Relations Board, on December 13, 1944.

Board's Exhibit 12 for identification is the Affidavit as to Service of the Notice of Change of Place of Hearing upon each of the parties to this proceeding, together with return Post Office receipts attached thereto.

I offer these documents in evidence as Board's Exhibits 1 to 12, both inclusive and herewith submit them to the parties for their inspection.

9 Are all the exhibits here, counsel?

Mr. Dahling: No objections.

Trial Examiner Jaffee: They are received.

(The documents heretofore marked Board's Exhibits 1 to 12, both inclusive, for identification were received in evidence.)

Mr. Karasick: Mr. Examiner, I would like to request at this time a five minute recess for the purpose of discussing with counsel for the Company certain issues in this case which I believe can be disposed of by stipulation and which will save a considerable amount of hearing time.

Trial Examiner Jaffee: Very well, we will take a five minute recess.

(Recess.)

Trial Examiner Jaffee: On the record.

Mr. Karasick: Mr. Examiner, I have had marked as Board's Exhibit Number 13, for identification, a stipulation and agreement by and between counsel for the Packard Motor Car Company and myself as counsel for the Board, with respect to facts concerning the business operations of the Company. I offer this document in evidence as Board Exhibit Number 13.

Mr. Nelson: There is no objection. I have read the paper.

Mr. Dahling: No objection.

Trial Examiner Jaffee: Received.

(Thereupon the document above referred to was marked Board's Exhibit No. 13 for identification and received in evidence.)

Mr. Karasick: Will you mark this Board Exhibit Number 14?

(The document referred to was marked for identification as Board Exhibit No. 14.)

Mr. Karasick: I have also had marked as Board Exhibit Number 14, for identification, a copy of a letter dated November 25, 1944, on the letterhead of the Foreman's Association of America, addressed to Mr. Elmer Patzkowski, Manager of Industrial Relations of the Packard Motor Car Company, Detroit, Michigan, and signed by Mr. Robert H. Keys, President, Foreman's Association of America, which letter contains a statement, in substance, that the Foreman's Association represents the majority of the employees engaged as foremen by the Packard Motor Car Company, and requests the Company to meet and negotiate with the Association on behalf of such persons. It is my understanding that counsel agree that the copy of the letter now offered as Board Exhibit Number 14 is a true and accurate copy of the original.

I offer this document in evidence as Board Exhibit Number 14.

Mr. Dahling: No objection.

Mr. Nelson: No objection.

Mr. Karasick: It is admitted, is it not, counsel, that this is a true and accurate copy received by the Company?

11 Mr. Dahling: It is admitted.

Trial Examiner Jaffee: Received.

(The document heretofore marked for identification as Board Exhibit No. 14 was received in evidence.)

Mr. Karasick: In connection with Board Exhibit Number 14, Mr. Examiner, I would like to state for the record my understanding of an agreement between the parties. It is my understanding that the Packard Motor Car Company and the Foreman's Association of America, through their respective counsel, stipulate and agree that the copy of the letter which has been received in evidence, the original of which was received by the Company in due course of mail shortly after the date borne on the letter, and that the Company has not replied to such letter. Is that a correct statement, counsel?

Mr. Dahling: That statement is correct.

Mr. Nelson: It is so stipulated.

Mr. Karasick: Mr. Examiner, in a prior case, number 7-R-1279, there was involved a question concerning representation by the petitioning Union in this proceeding with respect to foremen employed by the Packard Motor Car Company, which resulted in a consent election conducted by the Seventh Regional Office of the Board. I have had the formal documents in case number 7-R-1279 marked as Board Exhibits 15 to 19, both inclusive, for identi-

12 fication, and I wish to offer these documents in evidence at this time as a matter of convenience for the Board. These formal documents are as follows:

Board's Exhibit 15 for identification is a copy of the petition for investigation and certification of representatives pursuant to Section 9-C, National Labor Relations Board Act in the Seventh Regional Office of the National Labor Relations Board on January 15, 1944 on behalf of the Foreman's Association of America.

Board's Exhibit 16 for identification is the copy of the agreement for consent election entered into on the first

day of February, 1943 by and between the Packard Motor Car Company and the Foreman's Association of America.

Board's Exhibit 17 for identification is a carbon copy of certification of counting and tabulating of ballots, of the election held pursuant to consent election agreement on February 24, 1943. This document, I might add, contains the original signature of representatives of the parties involved in that proceeding.

Mr. Dahling: Is that Exhibit 17 you are referring to?

Mr. Karasick: Yes. Board's Exhibit 18 for identification is a carbon copy of certification of conduct of election in Case Number 7-R-1279, which also contains the original signatures of representatives of the parties in that proceeding.

13 Board's Exhibit 18 for identification—

Trial Examiner Jaffee: (Interposing) 19, Mr. Karasick.

Mr. Karasick: I beg your pardon, Board's Exhibit 19 is correct. Board's Exhibit 19 for identification is a carbon copy of the report on consent election in case 7-R-1279 which was issued by Frank H. Bowen, Regional Director for the Seventh Regional Office, National Labor Relations Board on March 2, 1943.

I offer these documents in evidence as Board's Exhibits 15 to 19, both inclusive. I wish to state at this time that as to those documents now offered which are copies, I have the originals in my possession and that the parties may compare them and see that they are true and accurate copies.

Mr. Donovan: Before we examine those exhibits, may I ask counsel for the Board if the Board's offered exhibits 15 to 19, with reference to certain events in 1943 by the Packard Company, reflect the reason why Packard Motor Car Company was selected here in this proceeding rather than any of the Detroit industries that have foremen?

Mr. Karasick: I do not quite understand counsel's statement. Perhaps I better have it re-read to me.

Trial Examiner Jaffee: Will you read Mr. Donovan's statement, please?

14 (Mr. Donovan's statement was read.)

Mr. Donovan: Is my question clear, Mr. Karasick?

Mr. Karasick: No, not quite, counsel.

Mr. Donovan: Is it because Packard signed a recognition agreement once and you had an election, is that the reason why? Because you had an election of the Packard Motor Car foremen in 1943, is that the reason why Packard was selected here, rather than any other Detroit company, including the company before the War Labor Board Panel recently?

Mr. Karasick: In response to counsel's question, I am afraid that I can only state speculations as to the reason for the proceeding in this case rather than in any other case. It would be speculation on my part just as in his. I do not know why the Board proceeded in this case any more than in any other case. I do know in a prior case the same parties were involved and a consent election agreement was entered into. The consent election was held and the Union designated as the bargaining agent as the result of that agreement. To the extent that is so, it is my feeling that the Board would want to know about the facts and take official notice of its own records. In any respect, with relation to that fact, I will offer these documents.

If it will help counsel understand my position in the matter, they are offered only as a matter of convenience so that it will be in the record before the Board and at its fingertips. In any event, the Board notices and takes official notice of its own proceeding.

Mr. Donovan: Was the Notice of Hearing issued to the Packard Motor Car Company in this case? Was that decision made from the Regional Office or the Washington office?

Mr. Karasick: You will have to take that up with the Regional attorney of the Seventh Regional Office of the Board. All I know is that this case was assigned to me for preparation and presentation to a Trial Examiner.

Mr. Donovan: You do not know?

Mr. Karasick: No.

Mr. Dahling: Mr. Examiner, in going over the exhibits in connection with the alleged consent election, it is difficult for us to understand why they are offered at this time. I would like, if I can, to ask the attorney for the Board if the claim is made by him that these documents and the election and the result thereof are still in full

force and effect. Otherwise, I do not see how they are at all pertinent to this proceeding. It is over practically two years ago that the documents indicate there was a consent election. The other documents indicate that a majority of the foremen voted in favor of this particular unit. Now, as a matter of law, is it the claim of the Board at
16 this time, that that unit has been designated and that these documents are the evidence of that fact and consequently, the Foreman's Association of America is now designated as the bargaining agent for these foremen.

Mr. Karasick: Mr. Examiner, I may state in response to counsel's question, that the documents which are offered, as I previously stated, were offered for the convenience of the Board. It is my understanding that the Board in every instance, in a representation proceeding, is interested in knowing what other cases it has decided with respect to representation issues involving employees alleged to constitute an appropriate unit. Now, these documents are offered for that purpose and the documents speak for themselves. I am not making a claim one way or the other as to what the legal effect of these documents shows. I presume that the question concerning representation is present in this proceeding or we would not be here.

Mr. Dahling: Mr. Examiner, in this proceeding in 1943, if it developed into a legal obligation on the part of Packard to collectively bargain with the particular group then the appropriate proceeding, of course, would be not a new petition for representation, but a complaint for failure to collectively bargain. I do not see where these documents have any relevancy in this case at all because the Board apparently has decided to bring this proceeding
17 under the representation proceedings of the Act. Furthermore, it is too remote—practically two years have elapsed and I fail to see any relevancy at all in the documents.

Trial Examiner Jaffee: May I see Board's Exhibit 3? Board's Exhibit 3 is a document entitled "Trial Examiner's Statement in 'R' cases," a copy of which the parties have. In the fourth paragraph of that document appears

the following sentence at the end of the paragraph. (Reading):

> "Likewise, the time when organization began, the department or group of employees affected, the subsequent growth or decline of membership, present claims as to membership, and relations had with the Employer, including requests for collective bargaining and the presence or absence of contracts, are all of importance."

I call your especial attention to the phrase, "and relations had with the Employer." It would seem to me that the proffered evidence bears upon that phrase. Of course, that in turn does not necessarily mean because that language is included in Board's Exhibit 3, that necessarily makes the proffered evidence admissible. As to that, however, I can only say among other things perhaps, it is and has been customary for the Board for many years in representation cases to receive evidence as to the
18 past relationship between the Petitioner and the Company.

This proffered evidence bears upon that relationship and I think it is therefore admissible. Board's Exhibits 15 through 19 are received in evidence.

(Thereupon the documents above referred to were marked Board's Exhibits Nos. 15 through 19 and received in evidence.)

Mr. Donovan: May we be entitled to some statement from the Board counsel as to whether he claims any present effective force to any of these documents or not? That would be rather important to the Respondent or the Employer.

Trial Examiner Jaffee: Well, you have made your inquiry.

Mr. Donovan: I think the Trial Examiner should rule that we are entitled to an answer to that.

Mr. Karasick: I would like the record to show that a moment has elapsed between the time the request was made and the time I make my response. I do not want the record to show in any way that the Board is attempting to evade clarifying any requests or any documents, rather, about which counsel is in doubt.

With respect to the inquiry, no claim is being made with respect to these documents; this is not a case involving a complaint or charge with respect to refusal on the part of the Company to bargain or negotiate with
19 the Foreman's Association. The only question here is the question of representation of the employees alleged to be appropriate. These documents, as I have stated before, and as I think the Examiner has stated before, have been offered for the purpose of showing past relationships with respect to the employees involved, through their representatives and the Company.

Mr. Donovan: Do I understand, then, that counsel contends that the foremen of Packard in the proceeding reflected in these exhibits 15 to 19 have not designated any statutory representative and that we are in court as though no such proceeding ever was had?

Mr. Karasick: Mr. Examiner, I make no such statement and no such claim. I have stated pretty clearly what the documents are for, what the purpose has been for their admission. Now, if counsel wants to put on any particular construction on them, that is counsel's affair. I merely say that these are for the convenience of the Board. These documents neither add to nor detract from the power of the Board and it is usual and customary practice in inquiring into the entire bargaining relationship of the Company with respect to an alleged question concerning representation.

Trial Examiner Jaffee: I will say this, for the benefit of counsel: If the 1943 proceeding resulted in a
20 report by the Regional Director as a result of a consent election held at that time were in effect now, as far as the report is concerned, or what perhaps might be termed a certification by the Regional Director, I suggest it is a personal opinion, not at all binding upon the Board. And as Mr. Dahling indicates, it probably would not be necessary to bring a petition at this time, and there may be considerable merit on the argument that the mere bringing of the present petition might, as far as the Petitioner is concerned, constitute a waiver of any legal effect which that former proceeding has insofar as the earlier report of the Regional Director is of continuing

effect and exists at the present time. That, in turn, however, does not necessarily mean that even if it is not in effect at this time, that the evidence is irrelevant. It may have probative force in connection with the issues of this proceeding, even though it is not in and of itself of continuing and existing effect.

You may proceed.

Mr. Donovan: Is the Employer proceeding here on the theory that the Board is now requesting another election? So we understand.

Trial Examiner Jaffee: So I understand.

Mr. Karasick: Mr. Examiner, I would like to correct what I believe is a misinterpretation. The Board is
21 not requesting anything here at all. The Board is going through the administrative proceeding of determining the issues in this case which have arisen as an alleged question of representation involving employees in an alleged appropriate unit. The Board is not requesting anything. The Board is merely following its usual procedure in representation cases.

Trial Examiner Jaffee: My previous remarks were intended to refer to the Petitioner, rather than the Board. I understand, in other words, that the Foreman's Association of America wants an election.

Mr. Nelson: That is correct, Mr. Examiner.

Mr. Donovan: We certainly understand this is a representation case and that an election is contemplated. That is what we think we are in court for, and I am very much puzzled by counsel's previous statement. This is a representation case and it deals with the emergency, if any, and the identification of statutory rights, and it may involve, as representation cases do, naturally and obviously, an election to determine, and such an election would have to precede a certification, unless there was a consent by the Employer. Now, this would be the second election if one such were held, unless the Board is relying on the former election. I think it is upon the Board's
22 counsel to state whether he claims the designation of a majority by the Board of foremen having voted for the Foreman's Association, or whether he now says, for all practical purposes of this proceeding, that may be

disregarded and held as of no effect. We want to know what we are facing here. We are in court today.

Trial Examiner Jaffee: I will not require counsel for the Board to make any further statement unless he cares to make it voluntarily.

Mr. Karasick: I would like only to state, Mr. Examiner, that I think the record already shows the statements I have made with respect to these documents, and that counsel himself, through his own statement, has shown he is fully aware that this is a representation proceeding; that it contemplates a finding by the Board of the appropriate or inappropriateness, and depending upon such finding, the Board will direct an election or dismiss the proceeding. That is what the Company faces, and I think that, together with my other statements, would make clear the position of the Board.

Trial Examiner Jaffee: I would like to supplement that by saying that the past relations between the parties are, of themselves, evidence in this matter, and for that reason, if for no other, the Board Exhibits 15 through 19 have been received.

Mr. Karasick: May I proceed, Mr. Examiner?

23 Trial Examiner Jaffee: Yes.

Mr. Karasick: I have had marked as Board Exhibit 20 for identification, a tabulation dated December 11th, 1944, being a list of the companies affected by strikes involving foremen and supervisory workers for the period July 1, 1943 to November, 1944, on file in the Industrial Relations Division of the Bureau of Labor Statistics. This document is certified as a true tabulation by A. F. Hinrichs, Acting Commissioner of Labor Statistics, and Frances Perkins, Secretary of Labor.

I offer this document in evidence as Board Exhibit Number 20.

Mr. Donovan: What, may I ask, is the purpose of this offered bit of evidence?

Mr. Karasick: The purpose, Mr. Examiner, of the evidence now proffered as Board Exhibit Number 20, is to show whether or not labor disputes involving questions of representation by foremen and other supervisory employees have arisen during the course of time covered by

that document, and the nature and extent of those disputes as shown by a recognized government agency.

Mr. Donovan: Does this document contain a record of the strikes of foremen, as well as disputes?

Mr. Karasick: As soon as Mr. Nelson finishes looking at it, you may look at it.

24 Mr. Donovan: Can you not tell me informally whether it contains a record of the strikes of the foremen as well as disputes?

Mr. Karasick: Well, I call them work stoppages. You may call them what you please, or so may anyone else.

Mr. Donovan: Does this contain a record of the strikes of foremen, as well as disputes?

Mr. Karasick: It contains a record of all work stoppages. They are labor disputes or work stoppages which affect the operations of the Company.

Mr. Donovan: They are the sort of thing that may be called strikes by one person or one group of persons and labor stoppages by another group of persons?

Mr. Nelson: I think it is fair to say it does not include all disputes. As Mr. Donovan has used the word "disputes", that might be much broader than that which are called stoppages.

Trial Examiner Jaffee: If you used "disputes" in its broadest sense, I do not know how anyone could make a tabulation of them.

Mr. Nelson: I do not know myself.

Mr. Karasick: That was my basic reason for referring to them as work stoppages, Mr. Examiner, which I think is a more clearly defined term.

25 Mr. Dahling: Mr. Examiner, as far as the Packard Motor Car Company is concerned, despite the fact that the document marked for identification as Board Exhibit Number 20, on the last page, page four, states that the figures are only partially complete, we have no objection to its introduction in evidence.

Mr. Karasick: Have you seen it, Mr. Nelson?

Mr. Nelson: Yes, I have, and there is no objection.

Mr. Dahling: May we have a copy?

Mr. Karasick: I will furnish a copy.

Mr. Nelson: I take it, Mr. Examiner, if either of the

parties wish to, or are able to, they will be at liberty to supplement the information contained in that document?

Trial Examiner Jaffee: You take it correctly.

Mr. Donovan: The Employer may, likewise, desire to supplement that in some way by additional data.

Trial Examiner Jaffee: Very well.

Mr. Karasick: I may say that if there is any additional data that any of the parties have with respect to the situation, I think the Board would be glad to receive it as, of necessity, it would be glad to receive the total and complete picture of the entire relationship between the parties in the issues of the case.

Mr. Dahling: Mr. Examiner, what bothers me, we have no objection to the exhibit, but I do not see how
26 strikes have any pertinency in connection with a proceeding of this character.

Trial Examiner Jaffee: Well, I can tell you at least one. One of the purposes of the National Labor Relations Act is supposed to be the preservation of industrial peace. Here is a paper which indicates that at some spots throughout the country "there ain't been such an animal."

Mr. Dahling: In other words, all any group of men would have to do in a situation of that sort would be to strike and thereby force a governmental body to give them what they want?

Trial Examiner Jaffee: Not at all. If you can show that some strikes were created for the purpose of creating statistics, so to speak, I think that would be relevant.

Mr. Dahling: Well, if that would be the case, I think we would be here, probably, until July.

Trial Examiner Jaffee: That may very well be.

Mr. Dahling: As to whether or not these strikes here in Detroit were justified—

Trial Examiner Jaffee: (Interposing) No, I did not say that.

Mr. Dahling: If they are not justified, there must be just one purpose for them, and that is to force the employer or force a governmental agency to give them
27 what they want—collective bargaining. At least, that inference certainly could be drawn from such evidence.

Trial Examiner Jaffee: At any rate, Board Exhibit Number 20 has been received in evidence.

(The document referred to was marked as Board's Exhibit No. 20 for identification and received in evidence.)

Trial Examiner Jaffee: Let us go on to the next matter.

Mr. Donovan: We would like a copy of that, Mr. Examiner.

Trial Examiner Jaffee: I understood counsel to say he would supply it.

Mr. Karasick: Yes, I think I have a copy with me now. I will give it to you.

28 Mr. Karasick: The Board has nothing further to offer at this time, Mr. Examiner.

Trial Examiner Jaffee: Is the Association ready to go ahead?

Mr. Nelson: The Petitioner is prepared to offer witnesses.

Trial Examiner Jaffee: Very well.

Mr. Nelson: I call Mr. Robert H. Keys.

ROBERT H. KEYS,

a witness called by and in behalf of the Petitioner, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Nelson): Mr. Keys, how long have you lived in Detroit?

A. Thirty-one years.

Q. You are a married man with a family?

A. That is correct.

Q. And did you previously work in a factory?

A. Yes.

Q. Where?

A. Ford Motor Car Company.

Q. And for how long?

A. Seven years.

Q. In what capacity?

29 A. In the capacity of machine operator, assistant foreman and division foreman.

Q. Had you previously worked in other factories in the industrial district here?

A. No, I had not.

Q. What had you done before you worked for Ford?

A. I worked for Sears, Roebuck & Company in the Shipping Department, for R. L. Polk, in the Shipping Department, and I had worked as a mechanic in garages, repairing automobiles.

Q. You said you were a machine operator at Ford's. Can you give us the type of machine you operated?

A. The first type I ever operated with the Company was a drill press, but throughout the years I have operated numerous machines, such as lathes, grinders and milling machines.

Q. Do you recall when you became a foreman?

A. Yes, I can recall definitely when I was told I was a foreman. However, the record, we found out later, did not confirm that fact. I was told that I was an assistant foreman about the month of May in 1934.

Q. And was it one of your superiors that told you you were a foreman?

A. That is right.

Q. Did you at once proceed to act in the capacity of supervisor?

A. I did.

Mr. Donovan: Let us fix the year, approximately, so we will know when we are talking about.

Mr. Nelson: 1934 and the month—will you tell Mr. Donovan the month?

Mr. Donovan: I just want the year.

The Witness: I said about the month of May, I believe, 1934.

Q. (By Mr. Nelson): And how long did you act as assistant foreman?

A. Well, I remained on that job until they asked me to go to the Aircraft Building—I beg your pardon, they asked me to go to the "B" building.

Q. What was the "B" Building?

A. It was another one of the buildings composing the Ford Industry at River Rouge.

Q. What did they do in that building is what I am getting at?

A. We built panels for automobile bodies, and various parts for automobiles. However, the job that I was asked

to go on was to take charge of rear axle assembly for Ford, Ferguson Sherman tractors. Mr. Nelson, might I make a correction?

Q. Yes.

31 A. That May date should be 1933. I recall now, and not 1934.

Q. And how soon after the fact of entering supervision did the records catch up so you were recorded as a supervisor?

Mr. Dowling: I cannot see any relevancy in that.

Mr. Nelson: Just the same, it is the same thing that we want to correct here and I want to illustrate it by this witness. I am not offering it solely because of Mr. Keys' experiences, your Honor, I will offer it because it is the kind of thing the Foreman's Association is desiring an opportunity to correct.

Trial Examiner Jaffee: You may answer.

The Witness: Well, I assumed that I was recorded as a foreman when I was told so by my superior and it was not until I had left the employment of the Ford Motor Company and the Ford Chapter officers in their negotiations with the Company in correcting certain records, discovered the fact that my record was one of the records that was very incomplete. If I recall correctly, although I had acted and had assumed I was a foreman for about four years, that the record did not show it.

Mr. Donovan: Mr. Trial Examiner, are we going into the grievances of the foremen in this representation case?

Trial Examiner Jaffee: I do not know what we are

32 going into. I do not know what evidence is going to be offered.

Mr. Donovan: I have reference to the last question and answer. I am unable to attach any relevancy to it in this particular case, unless the witness, through counsel, is attempting to develop a historical foreman's grievance, which are reasons why they should have this or that.

The Witness: Mr. Nelson,—

Mr. Donovan: I would like a ruling from the Trial Examiner on that.

Trial Examiner Jaffee: There is nothing to rule on. What do you want me to do now?

Mr. Donovan: You are running the trial—

Trial Examiner Jaffee: I heard no objection to any question.

Mr. Dahling: It has been objected to on the ground that it was irrelevant and I understood you to overrule the objection. The question was put as to whether or not we are in this case going to develop—is the Trial Examiner going to permit the witnesses for the Union to develop grievances which they claim they may have as a part of this case? If that is to be considered relevant testimony, of course, we would like to know. We only spent about six months of this last year going into those particular grievances before the War Labor Board. I do not feel that
33 testimony of this sort is at all relevant in a proceeding of this character. It does not make any difference whether they are grievances or not, as far as this hearing is concerned.

Trial Examiner Jaffee: At this state of the hearing, as it stands at the moment, I cannot indicate in advance what I am going to do. I will have to cross that bridge when I come to it. That is all I can say on that subject at this time.

Q. (By Mr. Nelson): How long did you work as supervisor in "B" Building at Ford's?

A. Approximately two years.

Q. How many years of experience as a supervisor did you have there?

A. The total with Ford Motor Company?

Q. Yes, as a supervisor.

A. As far as experience goes, I had about six and a half years.

Q. And when you discontinued active work as a supervisor what position did you hold? What rank of foremanship were you in?

A. I was classified as a division shift foreman.

Q. Where is that in the hierarchy of foremen, is that the lowest foreman nearest to the workman or somewhat removed?

A. No, I had foremen under my supervision who
34 were classified as job foremen.

Q. How many?

A. I had three.

Q. Three job foremen and your division foreman and above you were other foremen in the factory?

A. That is right.

Q. As a foreman did you become acquainted with other foremen in the Ford Motor Company?

A. Yes.

Q. And did that acquaintanceship ultimately lead to discussions among you?

A. Yes, sir.

Q. Discussions of an association or an organization?

A. Yes, sir.

Q. When did that begin to take form?

A. The month of August, 1941.

Q. And that was after the organization drives in 1936 and 1937 among the maintenance and production workers?

A. That is right.

Q. And after the maintenance and production workers had obtained and had in operation contracts with their employer?

A. Correct.

Q. Tell us now whether you as a foreman had or knew of any other foremen who had anything to do with the formulation and contents of those contracts with the
35 maintenance and production workers?

A. I had no part in it and I do not know of any other foremen who did.

Q. Of any rank in the Ford Motor Company?

A. Yes.

Q. In August of 1941, you men began to talk of an organization, is that right?

A. That is right.

Q. Was that at first confined to the foremen in the Ford Motor Company plants?

A. Yes, at first it was confined to one building, our own building, the Aircraft Building.

Q. How early in 1941 did that discussion begin?

A. It started in the month of August, along about the middle of the month, I would say.

Q. You are bearing in mind that is before Pearl Harbor?

A. Yes.

Q. But after you had begun the production in the Ford factory of war materials?

A. Yes.

Q. How long after you had begun production of war materials?

A. Well, as a foreman I would have no way of knowing when the Company signed its contracts or how it negotiated them but they had been building the Aircraft Building possibly a year before that and it was not com-
36 pleted when I went over there. I can only hazard a guess and I would say there had been some war production for perhaps six months or so.

Q. They had been preparing for war production for something over a year, as you recall it?

A. Correct.

Q. Now, the old building, you say, that was the "B" Building, was it not?

A. Where we started talking about associations was in the Aircraft Building.

Q. How big a place is that, as to the overall number of men employed in it, Mr. Keys, let us get a brief idea of it?

A. The Company employs about 10,000 people in that building.

Q. And the supervisory force in that building would be how extensive in number?

A. Well, it went over the thousand mark, that I personally know of.

Q. You knew of over one thousand supervisors in that one building?

A. That is correct.

Q. And that building is located at the Rouge central plant of the Ford Motor Company in Dearborn?

A. That is right.

Q. Well, just give us a brief statement of the early
37 organization efforts in that building and tell us how they expanded, if they did, to other buildings.

A. Well, as I stated before, we started discussing the possibility of having an organization for foremen, an organization of our own that would be independent of any

other organization, for the purpose of discussing with the employer our own wages, hours and conditions of employment. I made several attempts to organize the foremen in our particular department during lunchtime and after working hours. At first they would say, "Let me think it over for a day or two." Most of them didn't seem to think that the foremen were entitled to anything like that because of the way they were treated out there, kicked around and pushed around. They didn't think they should be able to stand up and fight back. Mainly they were afraid, I will say it that way. Nevertheless, four of us, three others and myself, carried the ball, and in the month of September we held three meetings.

Q. That is 1941?

A. Yes, 1941.

Q. Let me interrupt you here, Mr. Keys, I will start you again there in September, 1941, and ask you if you had yourself any previous experience in organizing labor or wage earners?

A. No, I had never had any.

37A Q. You had done none because you had been a foreman at that time, something over six years?

A. That is right.

Q. And you had not been a maintenance and production worker in the organization years in 1935 and 1936?

A. No, I was not.

Q. Come back to September, 1941. You say you had three meetings of foremen?

A. We had three meetings in the month of September.

Q. Yes, by meetings you mean how many people?

A. Well, at the first meeting there were only twelve of us and at the second meeting I think there was about thirty-five.

Q. Where did you meet the first time?

A. The Arena Gardens in Dearborn, Michigan.

Q. You said how many at the second meeting?

A. About thirty-five.

Q. A little better than double?

A. Yes.

Q. All from the Aircraft Building?

A. That is true.

Q. Where did you have the second meeting?

A. In the Dearborn Arena.

Q. Is that a public building down there?

A. It was a public building where they held boxing
38 matches and so forth. It has since been razed.

Q. And the third meeting in September, 1941?

A. It was also held in Dearborn but it was held at a small hall on Michigan Avenue. I cannot recall the name of it but there were about 100 packed the place at that meeting.

Q. These meetings dealt with the subject of the possible organization of the foremen, did they, Mr. Keys?

A. Yes, that was the purpose of the meetings, but all the foremen wanted to talk about was grievances. We had a little difficulty straightening them out. They had to get the organization before they could talk about wages and so forth.

Q. They were so full of grievances that the subject matter was hard to get to, I suppose.

A. That is right.

Q. Now, were there further meetings in October, 1941?

A. Yes.

Q. And November?

A. Yes.

Q. Go ahead.

A. Although I did not know it at the time, we later learned that the foremen of the foundry building were also organized.

Q. At the same time and independent of you?

A. At the same time and independent of us.

39 Q. But at the Ford Motor Company?

A. That was in the foundry building of the Ford Motor Company. They heard about our organization and that we were holding a meeting on October 19, 1941 in the Moose Hall in Dearborn, Michigan and their representatives were at our meeting. At that meeting the two groups joined together and adopted the name "Foreman's Association of America" and selected the first temporary officers. About 300 people were present at that meeting, I would say.

Mr. Karasick: What is the date of that, please?

Mr. Nelson: October.

The Witness: 19, 1941.

Mr. Karasick: Thank you.

Q. (By Mr. Nelson): Were you one of the temporary officers?

A. Yes, I was elected as temporary president.

Q. Now, up to that time, had there been any organizer, as such? A person employed to make effort at organization as distinguished from his daily work?

A. No, none whatsoever.

Q. And at that time was any organizer employed?

A. No.

Q. In October, 1941?

A. No.

Q. Well, following October 19, 1941, presumably you had additional meetings?

A. We possibly had subsequent meetings but the only one I recall distinctly is the November 2nd meeting of 1941.

Q. Where was that held?

A. In the Fordson High School in Dearborn, Michigan. It was at that meeting that we adopted our first constitution and held our first official election of officers. We had about 1200 at that meeting.

Q. And still had no paid organizer?

A. No, none whatsoever.

Q. I assume that each of you men were interested—

Mr. Donovan (Interposing): No paid what?

Mr. Nelson: No paid organizer. Offering to show it was a thoroughly spontaneous movement.

The Witness: That is right, we had no paid officers, either, no one was paid anything.

Q. (By Mr. Nelson): All you men in that first period, from the first twelve up to the 1200, by November 2nd, a period of some sixty days or thereabout, were men interested only while you were still on the job?

A. That is right.

Q. Were you one of the officers elected on November 2nd?

A. Yes, I was elected as president of the organization.

Q. Did you continue after that working as a foreman in the Ford Shops?

41 A. Yes, I did.

Q. Did you pay for the use of the halls?

A. We did.

Q. You paid whatever the parties in charge requested or required, is that right?

A. We would pay it after the meetings. The men contributed. In other words, the hat was passed around and they would throw in a quarter or a half a dollar. One man threw in $5.00 one day. Then we paid for the meeting hall. A record was kept of the rest which was used to purchase what incidental material we needed to get on with our organization.

Q. Now, this was an organization of the foremen limited up to that time—limited to the Ford Motor Company plants?

A. That was true, although it was also our desire and our belief that all foremen needed organization and we felt that our organization would expand to a national organization.

Q. You thought of it but you hadn't taken any steps yet?

A. No steps had been taken.

Q. Did you continue going into the factory daily to work after that for sometime?

A. Yes, ten hours a day seven days a week.

Q. And you did this organization work on the side in your spare time, if any?

A. That is right.

42 Q. And the other officers did likewise?

A. Exactly the same.

Q. Until about what time when you required officers and became full time employees?

A. Well, the organization expanded so rapidly that along about the first of the year we began to get inquiries from other plants.

Q. That would be the first of 1942?

A. Yes. We decided that we had better rent office space somewhere to have facilities to handle the demands for membership. After lookin around in the immediate vicinity there we located a large suite of offices in the

Carmen Center Building, 5746 Schaefer Road, Dearborn, which is still the headquarters of the Ford Chapter No. 1. We hired a girl. The officers continued to work in the shop and came to the office on Sundays or whenever they had time off. We worked on Sundays then.

Q. At that time there was tremendous pressure on your time it was very heavy, wasn't it?

A. Very much so.

Q. And you were asked to work very long hours and seven days a week pretty much every week, practically?

A. That is true, we were all glad to do it. We were trying to develop the Pratt and Whitney Aircraft engine for the Air Forces and we all realized that that came
43 before anything else.

Q. Such time as you gave to organization efforts was current with seven days a week and ten hours a day?

A. That is true.

Q. Did you for some little time then, confine your main efforts to the Ford Motor Company supervisors, your main efforts for some time?

A. Well, after we started the organization we did not have to put forth much effort. We were receiving demands for membership applications so rapidly that it was just a question of seeing that they got into the hands of the party requesting them. We did not have to go out to do any organizing.

Q. And you did not do any?

A. No.

Q. In the main, has that characterized the organization of the Foreman's Association of America and its various chapters up to the present time?

Mr. Donovan: Just a moment. Mr. Trial Examiner, I object to that question. It is much too general. What was done by the Foreman's organization from then on covers a lot of ground, and I do not care to have a general statement like that in a single yes or no answer. I think it should be strieken.

Mr. Nelson: I will specify as to the Packard Motor
44 Company in a moment.

Trial Examiner Jaffee: You are now asking about Packard?

Mr. Nelson: No, I am not. I was asking it more generally, and I will undertake to make it a specific inquiry to show just exactly how it was done in Packard.

Trial Examiner Jaffee: I know, but are you insisting on your pending question?

Mr. Nelson: Yes.

Trial Examiner Jaffee: I think a foundation should be first laid. I sustain the objection.

Mr. Nelson: I will be very glad to lay a foundation.

Q. (By Mr. Nelson): Did you at any time employ an organizer?

A. No.

Q. And are you familiar with the manner in which memberships in the Foreman's Association chapters have been obtained up to the present time?

A. Yes.

Q. Excepting the Packard Chapter, for the moment, Mr. Keys, has this spontaneous response continued from the beginning right up to present time?

A. The true answer to that question, Mr. Nelson, is that it is still spontaneous, to a great extent. However, we have had, for quite some time, a paid membership director.

45 Q. What are his duties?

A. Well, his duties are to answer the inquiries that come in requesting information about the organization; to send out the various bits of literature that we have about our organization, and, in the main, to answer questions, send out applications and charters and receive them, and to issue provisional charters to chapters or to groups of foremen I should say, when they send in an application for a charter.

Q. You have had an organizer for how long?

Trial Examiner Jaffee: He has not said he had any. He said he had a membership director.

Mr. Nelson: I am sorry.

Q. (By Mr. Nelson): You call him a membership director or organizer?

A. We call him a membership director.

Q. All right, how long have you had him?

A. We have had a membership director since the first

election that I described to you on November 2, 1941. But, as you will recall, I said we all worked in the plant.

Q. Yes.

A. And it was in the latter part of 1942, fully a year later, I am sure, when he was put on full time at the convention, and he started on full time January 1, 1943.

46 Q. And has continued since that time?

A. And has continued since that time.

Q. As a membership director?

A. That is true.

Q. Performing the functions you have described?

A. Yes, sir.

Q. Now, coming back to the Ford Chapter, you were elected president of that Chapter in how many years, Mr. Keys, yourself?

A. I was elected president of the Chapter at the election of November 2, 1941, but when we adopted our constitution on that date, the Constitution provided for our organization to be a national organization and I acted in the capacity of president of Ford Chapter until the convention in 1942. In the month of October that was, I believe, and at that convention I was elected to the national presidency and it became necessary for the vice-president of the Ford Chapter at that time to act as president until they could have an election, which they did.

Q. In the meantime, had the Ford Chapter increased in membership?

A. Yes, we reached a peak, I believe, of 8500 in the Ford Chapter.

Q. At about what time?

A. Well, I cannot give you the exact date, but when

47 we had the convention in 1942 we also had two or three other chapters at that time, and I am pretty sure by the 1942 convention we had about reached that peak.

Q. It was at about that time?

A. Yes.

Q. In the meantime, had the Ford Chapter made efforts to deal with the Ford Motor Company with respect to foremen?

A. Yes.

Q. And to obtain recognition?

A. Yes.

Q. Do you remember when you began those efforts?

A. Yes, in the month of May, 1942, we contacted the Company. On May 13, 1942, we filed a petition with the National Labor Relations Board requesting an investigation and certification. But on May 22nd of 1942, the Company discharged one of our building chairmen who was attempting to negotiate with the superintendent about an issue that was in existence at that time, and that was the foremen having to work an extra half hour each day without pay after the people under their supervision had gone home, and the superintendent fired the chairman.

Q. In which building?

A. In the Spring and Upset Building.

Q. His name was what?

A. Henry LaBeau.

48 Q. Leaving that at that point, Mr. Keys, for a moment, let me take you back and suggest to you that as a matter of fact you made a written demand on the Ford Motor Company earlier, did you not? Do you recall the date of that letter? I desire it just because it fixes the chronology more accurately.

A. I don't recall exactly. Our records will show it, but there were demands made upon the Company.

Q. The first of December, 1941?

A. As I said, I do not recall it, Mr. Nelson. I would have to check our records.

Q. But it would be some months prior to the discharge of LaBeau?

A. It was some months prior.

Q. Up to that time had the Company made any effort—up to that time had the Company met with you and discussed the Foremen's grievances, up to the LaBeau discharge?

A. Representatives of the Company had met with us, but didn't discuss any grievances, just said the foremen could stand on their own two feet and settle their own grievances, as far as they were concerned.

Q. You had not been successful in getting any relief up to that time?

A. No, these representatives of the Company took the position they represented the foremen, and when I questioned them as to why they had signed a contract
49 with the UAW-CIO, affecting the foremen adversely in one particular instance, and told them they hadn't done a very good job in representing the foremen, if that was the way they did business. That concluded the conference.

Q. On the discharge of LaBeau in May, 1942, what occurred?

A. 169 foremen employed in the same building protested the action of the superintendent, so he fired them all.

Q. On the spot?

A. Yes.

Q. Then what happened?

A. They went out and went home, and the next day they tried to come back to work and they were locked out at the gate. Plant protection men stopped them and said they couldn't go in. So the following Sunday, which was May 23, 1942, we called a meeting of our membership and there were 3700 foremen that came to the meeting and voted to strike.

Q. That was in the Ford Motor Company?

A. Yes.

Q. And what occurred?

A. At this particular meeting they gave a vote of confidence to the officers and instructed us to go about settling this problem, and if it was necessary to strike, and those 3700 pledged themselves to strike. It was on May 25th that we got a call from the Ford Motor Company asking if we would come over for a conference on this particular problem.

50 Mr. Donovan: Is this in 1942?

Mr. Nelson: Yes.

The Witness: This is in 1942, yes.

Q. (By Mr. Nelson): As far as you know, Mr. Keys, was that the first strike authorization by any portion of the Foreman's Association of America?

A. That was the first.

Q. And was there a strike or was there not one?

A. No. We met with Mr. Harry Bennett, Mr. Ray

Raush, Mr. Harry Mack, Mr. James Brady, Jack Block, in Harry Bennett's office on the afternoon of May 25th.

Q. By "we," you mean who?

A. Myself, as president, Mr. William Elliott, Mr. McDermott, and Mr. Allan Nelson, representing the Association.

Q. Was the discharge of LaBeau and the accompanying controversy discussed at that meeting?

A. That was the purpose of the meeting, and that was the discussion.

Q. Tell us just briefly the result of the discussion.

A. The result was that Mr. Harry Bennett called the superintendent in that building and asked him what business he had to discharge anyone for organizing, and that these men were to come back on their jobs immediately.

Q. The 169?

A. 170, including LaBeau.

51 Q. And were they taken back without further incident?

A. Yes, and their cards were gotten from the time office for them and they went back to work.

Q. This conference avoided a strike in that instance?

A. It did, definitely.

Q. Now, was that the first instance where the Foreman's Association representatives had confronted as imminent a situation as that?

A. Yes, that was our first experience.

Q. And I presume it was your first individual experience in a matter of that kind?

A. That is true.

Q. Now, at that time, Mr. Keys, you were acting, were you, as president of the National or president of the Ford Chapter?

A. Both.

Q. Both?

A. I was the duly elected president of the Ford Chapter, acting as national president.

Q. Because, in the meantime, other plant supervisory employees had applied for charters?

A. That is true.

Q. At least, some provisional charters had been issued?

A. That is true.

Q. Would you remember about how many?

A. At the time of the May incident?

52 Q. Yes, May 25th, when you met Mr. Bennett and adjusted this threat of a strike?

A. Well, I would say that we had possibly three—two, I am sure of.

Q. Well, where were they?

A. Briggs Manufacturing Company and Chrysler Corporation.

Q. What is the next incident illustrating the development and growth of the Foreman's Association, Mr. Keys?

A. Well, after Mr. Harry Bennett instructed the superintendent to take these foremen back immediately, we discussed foremen's grievances with him, and these other gentlemen I mentioned a moment ago, and the result of that conference was that Mr. Bennett instructed Ray Raush, who was plant superintendent in charge of the entire plant, to select a committee of superintendents to meet with our committee for the purpose of ironing out foremen's problems, and Mr. Raush, on June 17, 1942, called all of the superintendents together and the officers of the Executive Board members of the Ford Chapter met with the superintendents and they selected a committee and we selected a committee and started negotiations, which resulted in the first signed agreement with Ford Motor Company, on November 5th, establishing wages and classifications.

Q. November 5, 1942?

A. November 5, 1942.

53 Trial Examiner Jaffee: When was that meeting?

The Witness: The meeting was on June 17, 1942, with the superintendents, where we selected the committee.

Q. (By Mr. Nelson): And it took you until November to get this preliminary contract?

A. Yes, due to the fact that the entire records of the Company on foremen had to be gone through and straightened out, and we had to agree on how the foremen ought to be classified and what their rates of pay should be, how they should be paid, and so forth, and it took that period of time to do that.

Q. Following November, 1942, did you, that is, the Association, and the Ford Motor Company, operate under that contract?

A. We did.

Q. Was that contract signed as Foreman's Association of America?

A. It was.

Q. Ford Chapter?

A. It was.

Q. Was that your first experience with the contract?

A. Yes.

Q. With an employer?

A. Yes.

Q. And what followed the signing of that contract
54 with respect to the Ford Chapter, briefly and just in general?

A. Well, following that we applied to the War Labor Board for approval of the rates that were established in the contract, and that was approved by the War Labor Board.

Q. That is, you made a joint application with the Ford Motor Company?

A. No, we didn't make a joint application. The application was only signed by the Company, but we accompanied the Company's attorney and put in an appearance in Washington before representatives of the War Labor Board, and it was explained to them that it was sought jointly.

Q. Now, were there also included in that some salaried employees that required an application to the United States Treasury?

A. That is right.

Q. And you likewise, went with the Ford Motor Company to the United States Treasury representatives in connection with the raises reflected in that portion of the agreement?

A. No, we didn't go with them. They appeared there shortly before we did, but it was explained to the Treasury Department that it was sought jointly.

Q Did a time come when, Mr. Keys, the Company, working on its end of this agreement or carrying out this agreement, set up an office, a personnel office?

A. During our negotiations of our agreement, it was
55 agreed upon between both parties that an office would be set up to be known as the Foremen's Personnel Office. The purpose of the office was to keep records on foremen, have an availability list whenever a foreman was demoted or taken off a job, he would go on an availability list and, in general, it was to straighten out the chaotic condition of the foremen's records and conditions in the plant.

Q. By the way, while we are on that subject, do you find, generally, from the viewpoint of the foremen chaotic conditions in industry as to their classifications, wages, and so forth?

Mr. Donovan: I was unable to get that question.

Mr. Nelson: I will except the Packard Motor Car Company, because we will make a specific showing as to the Packard Motor Car Company.

Mr. Donovan: I should like to have the question read, or repeated.

(Question read.)

Mr. Donovan: If the Examiner considers that a relevant question, which I doubt, I do not think the weight would be of much assistance to the Board.

Trial Examiner Jaffee: It seems to be general.

Mr. Nelson: It is general. I am referring in general to the organization, I am offering it in general as to the organization.

56 Trial Examiner Jaffee: I do not think it shows anything on which the witness can answer. The word "industry" is very general.

Mr. Nelson: I think that would be true, but I think he would fairly be limited to those plants he knows about, Mr. Examiner.

Q. (By Mr. Nelson): I will ask you if, in the efforts to organize the Foreman's Association, if you have become acquainted with the facts in that regard?

A. Yes.

Q. What are they?

Trial Examiner Jaffee: Just a minute.

Mr. Nelson: I will make it more specific.

Trial Examiner Jaffee: I think the mere statement that he is acquainted is not sufficient foundation.

Q. (By Mr. Nelson): Have you had to deal with these conditions in handling the affairs of foremen?

Mr. Donovan: What is meant by "these conditions"?

Mr. Nelson: Referring to the lack of classifications, the status—

Mr. Donovan (Interposing): Just a moment.

Mr. Nelson: May I finish the question?

Mr. Donovan: I object, Mr. Examiner. I think that question should be reframed.

Trial Examiner Jaffee: That is what I understood
57 he was trying to do.

Mr. Nelson: I was asking if he knew about it and had dealt with it in the companies that had been organized by the Foreman's Association of America, and I limited myself to that.

Mr. Donovan: He said yes, and you are now telling him what to answer.

Mr. Nelson: You mean, your objection is that it is leading?

Mr. Donovan: Yes, it is leading and irrelevant.

Trial Examiner Jaffee: I have not heard a completed question as yet.

Q. (By Mr. Nelson): Have you had to do in your efforts and work as president of the National Association with the status of foremen?

A. Yes, every day.

Q. In the industries in which you have organized foremen's chapters?

A. Yes, every day.

Q. And are you acquainted with the facts as to those chapters and those companies so that you could determine whether the status and classification, position and authority of foremen generally is definite and certain, or whether it is chaotic and uncertain?

Mr. Donovan: Just a moment.

58 Mr. Nelson: He can answer that question yes or no.

Mr. Donovan: No, he cannot answer that question yes or no, I do not believe, Mr. Examiner, and I object to the question because I think the word "status" is wholly

undefined; it carries a connotation unfavorable to the employer. I object to it.

Trial Examiner Jaffee: In short, the short answer to your objection is you cannot get everything in one question. You only proceed one step at a time. The witness may answer yes or no.

The Witness: Yes.

Q. (By Mr. Nelson): And what is it?

A. In many instances, the foremen do not know how they are classified and when they have sought membership in our organization and we questioned them as to how they were classified, they have said, "I do not know," and in many cases they have worked with the Company a number of years.

Q. These are men of experience and continuity of employment you are talking about?

A. That is correct.

Mr. Donovan: I am not objecting to that question although it is based upon second-hand information. I am assuming, however, that the Examiner is allowing some liberality to both sides on questions of this type.

59 Trial Examiner Jaffee: I will allow a certain degree of liberality. I cannot commit myself as to how liberal I will be or will not be in particular cases. I think it would be rather silly of me to do so. We will cross those bridges also when we come to them.

Q. (By Mr. Nelson): After the Ford Motor Company—I think you said early in 1943—established an office, did the Foreman's Association deal with the Ford Motor Company through that office?

A. Yes, when the office was established, the Association's representatives dealt with the Company through that office, to a certain extent.

Q. Now, you seem to indicate there that you did not have the full scope of activity through those relations which you desired and which you felt were useful to the foremen.

A. No, our wages and classifications agreement of November 5, 1942, did not provide grievance machinery and our dealings in the personnel office in handling grievances

were all done without written grievances; they were usually agreed upon.

Q. That is, the Company could deal with you if they wanted to or they did not deal with you if they did not want to, is that right?

A. That is correct.

Q. And that led to some friction, did it?

A. Very much.

60 Q. What did the Association do about that?

A. Well, the Company, in its interpretation of one of the clauses of the wage and classification agreement, paid off the back pay to the foremen as they interpreted the clause. We did not interpret the clause the same way, and we decided we would have to take it to the National War Labor Board and let them interpret it for both parties, and because of our dispute over this differential in the wages paid, they shut off the grievance machinery again.

Q. You mean, they just quit operating the grievance machinery?

A. Yes.

Q. And what did the Association do? You said they went to the National War Labor Board?

A. No, we intended to, and I and Mr. Nelson, who was vice-president of the Association of the Ford Chapter No. 1 at that time, went to Washington to discuss this problem with the Board, because we were afraid there was going to be a strike. The men were very hostile, very disturbed, and on June 19, 1943, while we were in Washington trying to get the Board to take jurisdiction over this question, we got a long distance telephone call that on June 3rd—no, I beg your pardon, we got a long distance telephone call on June 19th that about 800 foremen had walked out.

Q. That was the very situation you were down there

61 trying to forestall?

A. That is correct.

Q. And at that time there was no grievance machinery in operation in the Ford Motor Chapter, with the Ford Motor Company?

A. No recognized grievance machinery of any sort.

Trial Examiner Jaffee: We will recess until two o'clock.

(The hearing in the above matter was recessed at 12:30 P. M. until 2:00 o'clock P. M.)

62 After Recess.

(Pursuant to recess, the hearing resumed at two o'clock P. M.)

Trial Examiner Jaffee: The hearing is in order.

Mr. Karasick: Will you mark this as Board's Exhibit 21 for identification?

(Thereupon the document above referred to was marked Board's Exhibit No. 21 for identification.)

Mr. Karasick: I have had marked as Board's Exhibit 21 for identification the report on investigation of interest of contending labor organizations signed by Ruth Greenberg, Field Examiner of the National Labor Relations Board on December 8, 1944. I will offer this document in evidence as Board's Exhibit 21.

Trial Examiner Jaffee: Are there any objections?

Mr. Dahling: We have no objections.

Trial Examiner Jaffee: It is received.

(The document heretofore marked Board's Exhibit No. 21 for identification was received in evidence.)

Mr. Karasick: I interrupted Mr. Nelson's examination of the witness for the purpose of introducing this document. At this time I have nothing further to offer for the Board.

Trial Examiner Jaffee: Very well.

ROBERT H. KEYS

63 resumed the stand, was examined and testified further as follows:

Direct Examination (Continued).

Q. (By Mr. Nelson) Mr. Keys, prior to the luncheon recess, you were at June, 1943 and I wish you would tell us what occurred in connection with the Ford Chapter's experience at that time. By the way, that is, of course, after May 11, 1943, isn't it?

A. Yes.

Q. Now, tell us what occurred.

A. We were having a dispute with the Company over the interpretation of a clause in the wage agreement that we had signed with the Company and as we were unable to arrive at a solution between ourselves, we were attempting in behalf of the Association, to get the War Labor Board to take jurisdiction of the dispute. On June 3, the Ford Motor Company discharged one of our building chairmen, Mr. George Kellogg. On June 5 the Ford Motor Company discharged another building chairman, Mr. William G. Elliott. On June 7 the Ford Motor Company discharged another building chairman, Bertram Fenrich. These discharges, along with the dispute in existence over the wage agreement, and disturbed the foreman somewhat and we were afraid they were going to strike. So, we had inserted in the Detroit newspapers an advertisement in which
64 we stated that we did not want a strike and stated our position over the matter in question. While Mr. Nelson and myself were in Washington trying to get the War Labor Board to take jurisdiction, some of the foremen took some of these advertisements in and placed them on the bulletin board.

Q. You mean in the plant of the Ford Motor Company?

A. Yes, that is right. The superintendent of one of the buildings ordered the chairman of that building to tear down these advertisements and he refused to do so by simply answering, "I did not place them there and I do not know anything about them." The result of that was that the Company then fired twenty-seven more foremen employees, most of whom were officers or chairmen of the Association. So, when they discharged these twenty-seven, about 800 other foremen struck on the afternoon shift of June 19, 1943.

Q. And you heard of that in Washington?

A. We heard of it by long distance telephone.

Q. What did you do?

A. We came back to Detroit immediately, and on June 22, 1943, held a mass meeting at the Fordson High School Stadium with about 5,000 Ford foremen in attendance, and a strike vote was taken and picket lines established that evening at the gates. About 1:15 A. M. the following

morning, Mr. Marshall and Mr. Haughton, from the
65 War Labor Board, met with us at the Ford Chapter offices and persuaded us to call off the strike, which we did, and ordered the foremen to return to work.

Mr. Donovan: What date was that, Mr. Keys?

The Witness: It would be 1:45 A. M., approximately, June 23, when the strike was called off.

Q. (By Mr. Nelson) Now, were all of these foremen who had been discharged re-employed or did they return with the other men?

A. No. When we called off the strike and all of the foremen attempted to come back to work the next day, the Ford Motor Company discharged about 800 of them and they made them stand in line at the foremen's personnel office to be questioned to be cleared out, and that went on from June 23 all day and on June 24 the foremen were so disturbed over this mass firing that about 2,000 of them walked out.

Q. What buildings were involved in the group of 2,000?

A. To the best of my knowledge, all of the buildings at the Rouge Plant.

Q. Was that the day shift or night shift?

A. It was during the day that they walked out.

Q. What happened with respect to that response to the Company's action on the 800?

A. The Company contacted us and wanted to discuss
66 the matter, and the settlement of the negotiations were that all the foremen went back to work.

Q. Now, let us see. After the 2,000 struck, the Company got in touch with you?

A. That is correct.

Q. And you responded promptly with negotiations?

A. Why, yes, right away.

Q. And finally all 2,000 came back to work, did they?

A. Including the early 27 that had been discharged, all but the three that I mentioned—Mr. Kellogg, Mr. Elliott and Mr. Fenrich, they didn't come back.

Q. For what reason?

A. The Company wouldn't accept them at that time.

Q. The negotiations resulted in all that had gone out coming back excepting the original three?

A. Yes.

Mr. Donovan: Who were those three, Mr. Keys, I did not get the name?

The Witness: George Kellogg, William Elliott and Bertram Fenrich.

Q. (By Mr. Nelson) Then, Mr. Keys, the negotiations continued with the Company, did they, with respect to classifications and working conditions of foremen, following that?

A. No, we did have the grievance machinery, such as it was, in operation again for a short while following
67 that period, and, by that I mean, that the chairmen were recognized and presented the grievances of their constituents to the Foremen's Personnel Office. However, on December 21, 1943, the Company again decided to stop the grievance machinery and docked and disciplined one of our chairmen, Mr. Carl Brown, of the Bomber Plant.

Q. Well, now, before you come to December, Mr. Keys, Mr. Fenrich, Mr. Elliott and Mr. Kellogg did not, in the meantime, return to work, did they?

A. No.

Q. And did you take any action as an Association or Chapter during the summer of 1943 following the strike in June? And to refresh your recollection, I refer specifically to the petition and the hearing before the National War Labor Board in July and August of that year.

A. Yes, that took place in the month of August.

Q. And that was a hearing on your petition?

A. That was a hearing on our petition, yes.

Q. For what, briefly?

A. There were twelve points in dispute, but two of the main points were the settlement of the difference of opinion on the wage classification and the reinstatement of the three dischargd chairmen.

Q. Did it also cover the operation of the grievance machinery?

68 A. Yes.

Q. Which had been somewhat in disuse in the meantime, is that correct?

A. That is correct.

Q. And that was an extended hearing, was it not?

A. Yes, that was, and at the conclusion of the hearing, the Panel recommended that the committee representing the Association and the committee representing the Company take 15 days to enter into negotiations to see if they could settle their differences, which they didn't do.

Q. Why not?

A. Well, we couldn't arrive at satisfactory terms.

Q. You mean, with the Company?

A. That is right, they would not reinstate these three individuals I mentioned a moment ago.

Q. Then you get along into the fall of 1943 and approach this December event, is that right, Mr. Keys?

A. Yes. Following our negotiations, although they were unsuccessful and we referred it back to the Board, the Company did recognize our chairman again and grievances were being settled. However, on December 21, Carl Brown, Chairman of the Bomber Plant for the Association, was docked and threatened with discharge if he didn't get back on his job and quit handling grievances for the foremen, and when the Company attempted to stop the processing of foremen's grievances, 1200 foremen walked out from the Bomber Plant.

69

Q. On what date?

A. That was December 21, 1943.

Q. And while we are on it, briefly, was it the understanding and agreement with respect to this grievance machinery that men like Mr. Brown, in those offices he held, were to settle grievances on company time where necessary?

A. Whatever time was necessary they were to be allowed.

Q. It was in the performance of such things as that within the agreement that Mr. Brown was docked and threatened?

A. That is correct.

Mr. Donovan: And threatened?

Mr. Nelson: Threatened.

Mr. Donovan: I do not know of any testimony here that he was threatened by anybody.

The Witness: That is right.

Mr. Nelson: Which eventually put a final end to grievance performance and processing?

The Witness: Yes.

Q. (By Mr. Nelson) And was recognized by the foremen?

A. When the Company told Mr. Brown he couldn't process any more grievances, when the foremen became
79 aware of that fact they protested to the superintendent's office and he told them that if they did not like it they could take their hats and start walking, which they did, about 1200 of them.

Q. Now, the Willow Run Plant was engaged at that time in war production one hundred percent?

A. Yes, building B-24 Bombers, the Liberator.

Q. And the 1200 men walked out?

A. They did.

Q. Where were you? Were you here in Detroit at that time?

A. Yes, I was.

Q. What was the event, briefly stated, in connection with that event?

A. Well, as soon as I was notified, I attended a meeting of the striking foremen and they were determined to stay out until the Company recognized their grievance machinery again. The following day, the Company again sent for us and this time we negotiated an agreement with them to negotiate a contract. In other words, they signed an agreement with us that they would meet and negotiate a full contract if we would send the foremen back to work, which we did immediately.

Q. How long were these 1200 men out at the Willow Run Plant?

71 A. One day.

Q. Did you promptly, after that, or shortly after that, begin the negotiations for the contract referred to?

A. Yes, we signed that agreement on December 22, and on December 28 I wrote a letter to the National War Labor Board asking them to hold in abeyance their decision on the case that was pending before them. On February 1, which is the date we had agreed we started negotiations.

Q. That would be February 1, 1944?

A. Yes.

Q. How long did the negotiations continue, Mr. Keys?

A. Until May 9, 1944, when we signed the present contract that is in effect.

Trial Examiner Jaffee: May 9?

The Witness: May 9, 1944.

Mr. Nelson: Mr. Reporter, will you mark that as Petitioner's Exhibit 1?

(Thereupon the document above referred to was marked Petitioner's Exhibit No. 1 for identification.)

Q. (By Mr. Nelson) Mr. Keys, I show you Petitioner's Exhibit 1 and ask if that is a true copy of the contract of the Ford Motor Company with the Foreman's Association of America, Chapter Number 1, the Ford Chapter?

A. Yes, that is a true copy of the contract signed May 9 with the Ford Motor Company with the Fore-
72 man's Association of America.

Q. An original of this is on file in the office of the Association and available for inspection at any time?

A. That is right.

Mr. Nelson: I desire to offer and do offer this in evidence and I will offer printed copies to counsel, unless they would rather see this one.

Trial Examiner Jaffee: Are there any objections, gentlemen?

Mr. Dahling: May we have a moment, Mr. Examiner?

Trial Examiner Jaffee: Yes.

Mr. Dahling: We do not dispute this contract insofar as it is offered merely for the purpose of showing this contract. We have no objection.

Trial Examiner Jaffee: It is received.

(The document heretofore marked Petitioner's Exhibit No. 1 for identification was received in evidence.)

Q. (By Mr. Nelson) Mr. Keys, since May 9, 1944 and up to the present time, has this contract been in force as between Chapter Number 1 and the Ford Motor Company?

A. Yes.

Q. And it continues in force?

A. Yes.

Q. The contract itself provides for the expiration of the contract—

73 A. (Interposing) The contract itself provides for the expiration of the contract and renegotiation and so forth. There are supplemental agreements being negotiated at the present time and two supplemental agreements have been signed since the signing of this original on May 9 with the Company.

Q. Amplifying or relating to other matters on which the Chapter and the Company are able to agree?

A. Yes.

Q. Did you have a sort of a standing committee between your Association Chapter Number 1 and the Company for the purpose of dealing with additions and changes to the contract as experience seems to indicate that it should be changed?

A. Yes, Ford Chapter Number 1 has a negotiating committee and the Company has a negotiating committee who meet quite frequently to discuss additional items.

Q. And up to the present time two supplements have been added to that contract?

A. That is true.

Q. And others are in progress on negotiation now?

A. That is true.

Q. The grievance machinery referred to in this contract is in operation and has been since the date of the contract?

74 A. That is right; Mr. Nelson, before you proceed and in order to make the record complete, following the signing of that contract on May 9, I wrote a letter to the Chairman, Chairman Davis of the National War Labor Board and withdrew our War Labor Board case in its entirety because when we signed this contract the three building chairmen, Mr. Kellogg, Mr. Elliott and Mr. Fenrich were reinstated with full back compensation from the time of the discharge so we had no War Labor Board case and I withdrew it.

Q. So that terminates the War Labor Board proceeding?

A. That is correct.

Q. And these three men were returned to the employ of the Ford Motor Company?

A. Yes and compensated with sums up to $5,000 for back pay.

Testimony of Robert H. Keys

Q. Now, Mr. Keys, stepping aside from the general history of the Ford Chapter as outlined in your testimony and taking up the national organization as such, I think you stated this morning that the national organization, that the Ford Chapter, when it was the only chapter, regarded itself at least as the seed of the national organization and acted accordingly, is that correct?

A. That is right.

Q. I think you indicated early that it received as
76 much as two or three applications for charters from foremen in similar plants in the Detroit district?

A. That is right.

Q. Did that process continue, or did you continue to receive applications from foremen similarly situated in this and other industrial communities?

A. That continued right up to the present date.

Q. After the adoption of the first constitution for it, that really covered the work of the Ford Chapter and continued provisions looking toward an extension, did you amend and add to your constitution and by-laws?

A. Yes, at the Convention of 1942, 1943 and again in 1944.

Mr. Nelson: I ask the Reporter to mark this as Petitioner's Exhibit 2.

(Thereupon the document above referred to was marked Petitioner's Exhibit No. 2 for identification.)

Q. (By Mr. Nelson) Mr. Keys, I show you Petitioner's Exhibit 2 and ask you if that is a true copy of the Constitution of the Foreman's Association of America, the National organization, at the present time, in force at the present time?

A. Yes.

Q. And that follows the National Convention when?

A. September, 1944.

77 Q. It is the one presently in force?

A. Yes.

Mr. Nelson: I offer Petitioner's Exhibit 2 in evidence and I offer counsel copies for their examination and I offer the original to the Trial Examiner.

Mr. Karasick: I have no objection on the part of the Board.

Mr. Donovan: Mr. Trial Examiner, I would like to ask Mr. Nelson if he intends to introduce—he is giving a history of the Foreman's Association of America—if he intends to issue the earlier constitution of the Foreman's Association of America where their membership is confined to foremen. This I take it is the last one and where it is not so confined.

Mr. Nelson: Mr. Examiner, in reply to Mr. Donovan's inquiry, we do not agree with his statement of alleged fact with respect to any limitation, but if counsel really desire for us to offer in evidence the first constitution, we have no objection to doing it, and will do so, though I am advised now that we do not happen to have any copies present at the hearing. We will have to get them. Oh, I see they have a copy. We will offer their copy.

Mr. Donovan: Yes, we would like to have it offered.

Mr. Nelson: Good. It does not happen to be the first one, though. I will ask Mr. Keys which one it was.

78 Do you want to strike out that exhibit number 11 on there, or do you want the first one?

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Mr. Donovan: We feel, Mr. Trial Examiner, in view of counsel's offer, which we accept, that we would like to have in evidence the several constitutions of the Foreman's Association, inasmuch as we are having the detailed history of organization unfolded. The reason we want this at this point is because, as it developed here earlier, in the original constitution the Foreman's Association of America contained a provision which apparently limited their membership to foremen. In the subsequent constitution which they have introduced in evidence, it was not so limited, but could include higher supervision.

Trial Examiner Jaffee: In the meantime, Petitioner's Exhibit 2 has already been received.

Mr. Nelson: The scope was wider to begin with than it is now, but it is all right. I will ask the Reporter to mark this as Petitioner's Exhibit Number 3, which I have obtained from Mr. Donovan.

(Thereupon the document referred to was marked for identification as Petitioner's Exhibit No. 3.)

79 Q. (By Mr. Nelson) Mr. Keys, I ask you what period this constitution of the Foreman's Association of America, marked Petitioner's Exhibit 3, covered in the form that it is in; that is, what year, roughly speaking?

A. This is the amended constitution from the 1943 Convention and was the constitution in effect prior to the constitution that you have offered as Exhibit 2. In other words, Exhibit 2 supersedes this additional constitution.

Q. Now, prior to this, there was still a different one?

A. There was still another.

Mr. Nelson: We will obtain a copy and offer it in evidence. Shall we mark as an exhibit, Mr. Examiner, at this time, that is, reserve a number for it, so as to bring it in the correct sequence with these others?

Trial Examiner Jaffee: Very well. Petitioner's Exhibit Number 3 is received.

(The document heretofore marked for identification as Petitioner's Exhibit No. 3 was received in evidence.)

Trial Examiner Jaffee: Number 4 will be reserved for the document which supersedes Petitioner's Exhibit Number 3.

(Number 4 was reserved at this point to mark Petitioner's Exhibit No. 4 later.)

80 Q. (By Mr. Nelson) Mr. Keys, in general, I take it, the constitutional changes reflected the needs in the growth that accompanied your efforts?

A. That is correct.

Mr. Nelson: I am returning Petitioner's Exhibit Number 3 to Mr. Donovan.

Q. (By Mr. Nelson) Now, Mr. Keys, it has been intimated in a statement by Mr. Donovan here that there was some constitutional provision restricting the membership or making it more narrow than it is now. What is the fact in that connection?

A. There has been a change in the phraseology, but the intention and the construction of the constitution is the same.

Q. Do you, in your experience, in contacting foremen in other plants and other industries find that there are dif-

ferent names applied; that is to say, if you took a given amount of authority, if you took a given amount of responsibility, that man is called one thing in one shop, another name in another shop, and another name in another shop? Do you find that so?

A. That is right, that has been our experience.

Q. Do you also find that while you included almost exclusively men in the early days of organization, now you have to deal with women supervisors of men and men supervisors of women, is that correct?

81 A. That is correct.

Q. And so in order to meet those developments in organizational work, you have altered the phraseology in your constitution from time to time?

A. That is correct.

Q. Did it have anything to do with limiting those grades of supervision that you were organizing?

A. No.

Q. Roughly speaking, Mr. Keys, what is your organization? You have spoken of the chapters here and of the National. Are there any other grades of organization or areas?

A. No. We have the National Headquarters located in the Barlum Tower, Detroit, Michigan, and then we have 150 chapters scattered throughout the United States.

Q. Are there regional organizations of chapters and regional directors?

A. Yes.

Q. And when did that develop, formulate itself, or take shape?

A. I could give you the exact date if I could be permitted to investigate our records a little bit. However, so far as regional directors are concerned, we have had a regional director in the City of Chicago on full time, now for about eight or ten months at least.

Q. And you have other regional directors in the country?

82 A. We have a full-time regional director for the State of Illinois, we have a full-time regional director for the State of Indiana, and we have a full-time National Representative that covers any territory or any area

that we desire to send him into. We have sixteen National Executive Board members who also act in the capacity of National Representatives on part time basis. We have three other National Representatives on part time basis. When I say part time basis, I mean men working in the shops and also acting as representatives for the Association.

Q. Now, beginning at the bottom, you have the individual member, who is in a chapter?

A. Right.

Q. And where there are sufficient number of chapters, a regional organization with a director, and then the national organization itself?

A. That is correct.

Trial Examiner Jaffee: I like to think of the individual members at the top.

Mr. Nelson: Well, he is the foundation of everything, Mr. Examiner, just like good hard work is at the bottom. We put him at the bottom not by way of minimizing his importance; he is the foundation of the whole thing and the rest of the thing is his servant. I am perfectly
83 willing to refer to him as being at the top, if that is more harmonious.

Trial Examiner Jaffee: I am sure we are thinking of the same thing anyway.

Q. (By Mr. Nelson) Now, this organization functions through chapter officers?

A. That is correct.

Q. Building representatives or shop representatives of groups of foremen?

A. That is right.

Q. And the chapters have regular meetings?

A. That is right.

Q. At stated intervals and, where possible, at understood places?

A. That is right.

Q. Then the National Executive Board has regular meetings does it?

A. That is correct.

Q. What are they, monthly or bi-monthly?

A. At least once each month.

Q. And the officers are in contact with others practically daily in the national offices?

A. That is right.

Q. The method of originating rules and legislation for the body is in national conventions?

84 A. Annually

Q. You have not yet gotten around, apparently, to regional conventions?

A. Not yet.

Q. That may develop later on?

A. It is possible.

Q. But the highest legislative function making rules for the body and the officers is the Annual Convention?

A. That is right.

Q. The activities are financed how, briefly?

A. By the dues paid by the members.

Q. And that is apportioned by the region and the national officers?

A. By the chapters and the national officers. Any regional expense is borne by the national office.

Q. That is an expense of the National Office?

A. That is right.

Q. You now have a number of full time men, including yourself, do you?

A. Yes, we have a full time president, two full time presidents, a full time secretary-treasurer, a full time membership director, a full time editor and research director—that is one office combined—and a full time national representative, and two full time regional directors. I

85 mentioned them before—one in Illinois and in Indiana.

Q. Now, as to the size of these chapters, is the Ford Motor Company Chapter still the largest chapter?

A. Yes.

Mr. Nelson: I will ask the Reporter to mark this as Petitioner's Exhibit Number 5.

(The document referred to was marked for identification as Petitioner's Exhibit Number 5.)

Q. (By Mr. Nelson) Now, Mr. Keys, I hand you legal cap typewritten sheets, 1 to 8, both inclusive, headed, "Chapters, Foreman's Association of America" numbering

each one, giving the name and address, the date chartered, and the industry in which it works, and I ask you if you have every reason to believe that that is a true and correct statement of what is shown by your books and is a fact as to the organization as it stands now?

A. That is a true listing, but it only shows 146 chapters up to November 30, 1944. There have been others added since that date.

Q. In the past 18 days there have been some additional chapters added?

A. Yes.

Q. But this is true as of the date it bears?

A. It is true as of the date it bears.

Mr. Nelson: I offer Exhibit 5 in evidence, and I
86 offer copies to counsel for their inspection. I offer the original to the Examiner.

Trial Examiner Jaffee: You said Petitioner's Exhibit 5 was an accurate list as of the date it bears. What date do you refer to?

The Witness: Mr. Examiner, this exhibit is marked number 5 and shows that on 11-30-44 Chapter Number 146 was chartered. I am looking at the last one on the list here.

Trial Examiner Jaffee: You are looking at the last number?

The Witness: Yes, I am looking at the last one on the list here.

Trial Examiner Jaffee: Since then, how many have been added, approximately?

The Witness: I am sorry, I cannot give it to you. I know there have been some, but I do not know exactly how many but we can find it out.

Trial Examiner Jaffee: Approximately?

The Witness: I was under the opinion that there had been four.

Trial Examiner Jaffee: Very well, are there any objections?

Mr. Dahling: No objections.

Mr. Karasick: No objections.

87 Trial Examiner Jaffee: It will be received. Proceed.

Mr. Nelson: I will ask the Reporter to mark these Exhibits 6 and 7 for the Petitioner.

(Thereupon the documents above referred to were marked Petitioner's Exhibits Nos. 6 and 7 for identification.)

Q. (By Mr. Nelson) I show you Petitioner's Exhibit 6, Mr. Keys, and ask you if that is an accurate statement as of the date it bears of the growth of the chapters by quarters from the beginning up to December 5, 1944?

Mr. Donovan: Mr. Nelson, doesn't your Exhibit Number 5 give all of your chapters with dates of their charters?

Mr. Nelson: It does, but this is a compilation. It collects that data and puts it on one sheet for you. I have the same thing for the quarterly membership growth on Exhibit 7. It condenses it from eight sheets of paper and you can read the quarterly growth on a half a sheet of paper.

The Witness: That is true. This brings it up to December 5 and shows 148 chapters which shows there have been two added since the date shown on that exhibit (indicating).

Trial Examiner Jaffee: That is Exhibit 5?

Mr. Nelson: That is true also of Exhibit 7.

The Witness: That is true.

88 Mr. Nelson: I offer these exhibits in evidence, Mr. Examiner, and I offer copies to counsel for the Packard Motor Car Company and to the Board and the original I offer to the Examiner.

Mr. Donovan: The present membership is 32,124?

Mr. Nelson: That is approximately right.

The Witness: As of the date shown on Exhibit 5, as of the date December 5.

Mr. Nelson: The answer is yes as of that date.

The Witness: Yes, as of that date.

Mr. Nelson: While we are on that subject, these are men that pay their dues and maintain a living membership in the Association?

The Witness: Yes.

Mr. Donovan: Would you mind, at this time, putting in the amount of the dues?

Q. (By Mr. Nelson) What are the dues?

A. $1.00 per month.

Q. Per member?

A. Per member and $2.00 membership fee to join.

Trial Examiner Jaffee: Initiation fee?

The Witness: Membership fee.

Trial Examiner Jaffee: All right.

The Witness: And 50 cents of the dues paying dollar for each member is held by the Chapter and fifty
89 cents paid to the National Office as a per capita tax.

Trial Examiner Jaffee: Fifty cents per month?

The Witness: Yes, sir.

Q. (By Mr. Nelson) May dues be paid annually instead of monthly?

A. Yes.

Q. And you prefer it that way?

A. Yes.

Trial Examiner Jaffee: There is no discount?

The Witness: No discount for cash.

Trial Examiner Jaffee: Are there any objections to Petitioner's Exhibits 6 and 7?

Mr. Dahling: No objections.

Mr. Karasick: No objections.

Trial Examiner Jaffee: They may be received.

(The documents heretofore marked Petitioner's Exhibits 6 and 7 for identification were received in evidence.)

Q. (By Mr. Nelson) By the way, on the matter of dues, so far do you have any checkoff?

A. No.

Q. These dues are all voluntarily paid?

A. Right.

Q. Mr. Keys, this staff of officers that you referred to, yourself, two vice-presidents and those in the National Office, their days are taken up during the working
90 day in general with what activities?

A. We all have our specific administrative duties. The secretary-treasurer, of course, handles the finances and works with the secretaries of the chapters. The membership director answers requests for information and sends out material and has jurisdiction over the Regional Director and the National Representatives. The two vice-presidents act as assistant to the president and handle any matters that he assigns to them. Myself as president,

I have general supervision over the entire organization which covers a multitude of things.

Q. At present you have a couple of proceedings before the New York State Labor Relations Board, do you not?

A. That is right.

Q. That require witnesses and papers and attendance, is that right?

A. That is right.

Q. And for instance, last week you had a hearing before a legislative committee of the State of New York on a proposed amendment?

A. That is right.

Q. And from time to time proposals for legislation for foremen come up in the Congress of the United States?

A. That is correct.

Q. And in addition to that you have grievances by
91 foremen and among foremen, do you not?

A. That is right.

Q. And those matters are frequently appealed to your office and require time and attention?

A. In any chapter where we do not have recognized grievance machinery or a contract with the Employer, practically everything from the Chapter is handled by the National Office.

Q. Until the chapter can more or less stand on its own feet with a full time administration?

A. That is right.

Q. These officers and offices have been added from time to time as the work of the Association increased, has it?

A. That is right.

Q. And as the number of members increased?

A. That is right.

Q. Now, are you familiar with the Constitution and By-Laws of any other supervisory union or association?

A. I have read most of them but I am not too familiar with any of them.

Q. That is, you could not quote them from memory, of course?

A. No, I could not quote them from memory.

Mr. Donovan: What relevancy would testimony of that

kind be, as to the appropriateness of this petition
92 here as to what he knows of some other organizations?

Mr. Nelson: I find out that he does not know and I have no intention to press the matter any further.

Mr. Donovan: I am glad you so found out.

Mr. Nelson: I am not. I wish he knew them all by heart.

Q. (By Mr. Nelson) Do you actually place any geographical limitation on a chapter just as such?

A. No.

Q. So if it organized anywhere within reasonable reach at all you would take it in if other conditions warranted?

A. That is correct.

Q. Do you have any other contracts than the Ford Motor contract?

A. Yes, we have a contract with the United Stove Company located in Ypsilanti, Michigan.

Mr. Nelson: I will ask the Reporter to mark this exhibit Petitioner's Exhibit 8.

(Thereupon the document above referred to was marked Petitioner's Exhibit No. 8 for identification.)

Mr. Nelson: I show you Petitioner's Exhibit 8 and ask you if that is a true and correct copy of that agreement of the United Stove Company.

The Witness: Yes, that is a true copy.

Mr. Nelson: I offer Exhibit 8, Petitioner's Exhibit
93 8 in evidence. I offer copies to counsel for the Board and counsel for the Company and the original to the Trial Examiner.

Mr. Donovan: Mr. Trial Examiner, we object to the relevancy of any miscellaneous agreement if there be more than this, having no bearing on this existence or non-existence of the Association. The right of the Petitioner here could not be tested for the non-existence of any such agreement.

Trial Examiner Jaffee: May I see Board's Exhibit 3? Will the Reporter please read Mr. Donovan's objection again, please?

(Mr. Donovan's objection was read.)

Trial Examiner Jaffee: Do you intend to offer any more, Mr. Nelson?

Mr. Nelson: I do not think so.

Trial Examiner Jaffee: You seem to predicate your objection on the theory that more would be offered, Mr. Donovan, and in view of Mr. Nelson's statement, do you still object?

Mr. Donovan: We do not see that it is relevant whether or not they had—whether or not they had—if the Foreman's Association of America had an agreement with another concern by the name of the United Stove Company or by any other name. I do not think the relevancy part
94 of the objection would make any difference whether there is one or a dozen of them or more. We could not test the action of the Board as to the Packard Company by the existence or non-existence of any such document as this. Certainly, we could not test what the circumstances were that were connected with the Employer's decision in that case to do certain things perhaps from the necessity or emergency or whatnot. We have no way of knowing anything of that kind nor does the Board and I do not think it is of assistance or any relevancy.

Trial Examiner Jaffee: I think the objection goes more to the weight than the competency. It will be received in evidence.

(The document heretofore marked Petitioner's Exhibit No. 8 for identification was received in evidence.)

Mr. Nelson: I will say to the Trial Examiner so as not to be in a position of making an incorrect answer, we have an oral agreement with another company in the process of being reduced to writing. Perhaps the typewriters are too slow so that Mr. Donovan will not be put to the trouble of making an objection.

Mr. Donovan: In that event I will ask that the statement about it be stricken from the record until such time as we do get the document.

95 Mr. Nelson: I want to warn you that I might have to break my word and put one more in.

Trial Examiner Jaffee: It is a statement of counsel and it is not evidence.

Mr. Nelson: I offer it for the purpose of keeping my lines open if the opportunity offers itself to offer an additional contract. I do not want to foreclose myself.

Trial Examiner Jaffee: There is one other alternative which you mention, Mr. Nelson. If the typewriters are slow you would not have to worry about it but if the hearing is fast the same will also be true.

Mr. Nelson: Well, we will do what we can on the latter. Counsel for the Board suggests that the Association attorney take the onus of suggesting a recess; the Company having also stimulated me in that regard, I take it I can make the request.

Trial Examiner Jaffee: I might add that I also heard a similar whisper from the witness. We will take a five-minute recess.

(Recess.)

Trial Examiner Jaffee: On the record.

Q. (By Mr. Nelson) Mr. Keys, prior to May 11, 1943, which I believe is the date of the decision of the Maryland Drydock case, how many petitions for representa-
96 tion had you filed with the National Labor Relations Board? By "you" I mean the Association.

A. I believe it was 20.

Q. And the majority of those petitions emanated from or originated in Detroit or the industrial area of Detroit?

A. Yes.

Mr. Nelson: I ask the Reporter to mark this as Petitioner's Exhibit Number 9.

(The document above referred to was marked for identification as Petitioner's Exhibit No. 9.)

Q. (By Mr. Nelson) Mr. Keys, these five sheets set up the chapters, case numbers, date of filing and the date of withdrawal of dismissal of the various petitions for representation. Does it thoroughly represent the records of the Association and the facts?

A. Yes.

Mr. Nelson: I offer the exhibit in evidence. I, unfortunately, have only one copy of this exhibit this afternoon, but I will prepare copies and furnish them to the Examiner and counsel. I offer it to counsel for the Company and I invite Mr. Karasick, if he is interested, to examine it also.

Mr. Dahling: May I ask one question, Mr. Examiner?

Trial Examiner Jaffee: Yes.

Mr. Dahling: Was this compilation taken from the
97 files of the National Labor Relations Board?

Mr. Nelson: I believe it is from the Association files, but I believe it has been compared with the files of the Local Board. We believe it is correct. We offer it, anyway, subject to any error we may have made, but I believe it is substantially correct.

Mr. Karasick: I may say, Mr. Examiner, that I do not know whether this is a complete and accurate list or not. If this has been prepared from the files of the Foreman's Association, I suggest that perhaps Mr. Nelson should qualify Mr. Keys with respect to that and determine that. I do not know how this list was prepared or what it was prepared from.

Q. (By Mr. Nelson) Was it prepared from the files of the Association, Mr. Keys?

A. Yes. In each case we got a copy of the petition, which we retained in our files, and that was taken from our files and from the copies of the original petitions.

Mr. Donovan: Mr. Trial Examiner, Do I understand that the witness is speaking of former petitions that were lodged with the National Labor Relations Board, the Seventh Regional Office here?

Mr. Nelson: That is right.

The Witness: That's right.

Mr. Nelson: Prior to the decision of the Maryland
98 Drydock case.

Mr. Donovan: All the petitions you filed are on this list and they were all the petitions filed with the Seventh Regional Office of the National Labor Relations Board?

Mr. Nelson: No, I think they are coupled with Cleveland, to be fair about it.

Mr. Donovan: As least, all you filed in Detroit, you filed with the Seventh Regional Office of the National Labor Relations Board here in Detroit?

The Witness: That is right.

Mr. Donovan: And this contains a complete list of such petitions?

The Witness: From the records that we have, yes.

Mr. Donovan: May I ask the witness a question about this exhibit, Mr. Examiner?

Trial Examiner Jaffee: Yes.

Mr. Donovan: Did you execute these petitions?

The Witness: Most of them I did, myself.

Mr. Donovan: Did you supervise the execution of the others?

The Witness: No.

Mr. Donovan: Some were executed by you and some were not?

The Witness: There may have been one or two that were executed by a vice-president.

99 Mr. Donovan: Did they all go through your offices of the Foreman's Association of America?

The Witness: To my knowledge, yes.

Mr. Donovan: And your office received, likewise, an official indication of the disposition in eac case, as to each one of those petitions?

The Witness: Those petitions were pending when the Board returned its Maryland Drydock decision.

Mr. Donovan: So that this is a complete list of the petitions formally filed with the National Labor Relations Board, with the Seventh Regional Office of the National Labor Relations Board, excepting for outstate chapters, from the very first until the Maryland Drydock decision?

The Witness: It is a complete list as far as our records shows. If any copies have been lost, I do not know of it, but our present day record shows we filed those on that list.

Mr. Donovan: Why does this offer of evidence not contain the first petition that was filed in the Packard case?

The Witness: If it doesn't contain it, it should. It was filed in the Seventh Region.

Mr. Donovan: It was, and there was a disposition made of it, is that right?

The Witness: I don't know of any disposition, other

100 than the election.

Mr. Donovan: Well, can you think of any other petition, aside from the first Packard petition, which this offered exhibit does not include?

The Witness: No, I cannot.

Mr. Donovan: But you do think of that as an omission from this list, the first Packard petition?

The Witness: Yes, to this extent, I know I filed a petition on Packard.

Mr. Donovan: Why did you not include that in this exhibit?

The Witness: I didn't know it wasn't on that list.

Mr. Nelson: Perhaps I can answer that, if counsel will permit me to answer it. I do not want to interrupt, but I can answer that.

Mr. Donovan: Well, the witness has offered this as an exhibit and has identified it.

Mr. Nelson: Oh, no, I offered it and it was prepared with my assistance too, and Packard was knowingly omitted from this exhibit.

Mr. Donovan: I am still at a loss to account for the offering of Petitioner's Exhibit Number 9 as a list of all petitions filed with the Seventh Regional Board of the National Labor Relations Board from the first of such petitions filed by or on behalf of the Foreman's
101 Association of America up to the time of the decision of the Maryland Drydock case. This witness has said at least twice that this is a list of all the petitions of which he has any knowledge, and he now says it does not contain the Packard petition. I would like to have the witness state why the Packard's former petition, which he states was filed, to his knowledge, was omitted from the list?

The Witness: Mr. Donovan, I don't think you heard me correctly. I said I didn't know it was missing from the list; that I recall having filed the Packard petition.

Mr. Donovan: Well, would you like to examine this list and see if you can find it on there?

Mr. Nelson: We can save time on this. I conceded it is not there. I know why it is not there and Mr. Donovan, if he wants to know why, I will tell him. If he wants to elicit it from this witness, that is a different matter. I do not know if the witness knows why or not.

Trial Examiner Jaffee: Well, do you?

The Witness: No.

Trial Examiner Jaffee: All right.

Mr. Nelson: Do you want to know why? I want to make a statement on the record. It isn't there because that case was processed. In other words, there was an election and since that time those cases on Exhibit 9 were pending at the time of the Maryland Drydock case.

102 Trial Examiner Jaffee: Petitioner's Exhibit 9 is a list of the cases pending at the time of the Maryland Drydock case?

Mr. Nelson: The exhibit so indicated. I would like for that to be put in in the proper light. The only petition pending at present is the petition presently being heard here.

Mr. Donovan: I would like to ask the Trial Examiner if I might ask the witness to state on the record at this point the disposition of the Packard petition.

Trial Examiner Jaffee: I thought the witness had indicated that it was disposed of by an election.

Mr. Donovan: He said it was processed. Does that mean that it was processed and they had an election and that the present Petitioner was designated as the statutory representative of the foremen? That the Foreman's Association of America in an election were designated as the statutory representatives for bargaining purposes? Was that the disposition? If not, I would like to know of it.

The Witness: The disposition of the petition, to the best of my knowledge, is the following. We filed a petition with the Board and the Field Examiner called Mr. Weiss of the Packard Motor Car Company—

Mr. Donovan: (Interposing) I am only inquiring what finally became of it. Weren't you received as a

103 bargaining unit at that time?

The Witness: We received a certification from the Regional Office here of the election only.

Mr. Donovan: From the Seventh Regional Office?

The Witness: Yes, certifying the election from the Seventh Regional Office.

Mr. Donovan: That certified the Foreman's Association of America as the designated representative?

The Witness: It certified the election results.

Mr. Donovan: All right.

Mr. Nelson: Then the Maryland Drydock decision intervened?

The Witness: That is right.

Mr. Nelson: That is as far as it went, so far as you know?

The Witness: That is right.

Trial Examiner Jaffee: This is the only petition, that is, this pending one?

The Witness: That is the only one we filed.

Mr. Nelson: The present petition here is the only petition filed since that time.

The Witness: Yes, with the National Labor Relations Board.

Mr. Nelson: Now, Mr. Keys—

Mr. Karasick: (Interposing) You have not had a
104 ruling on this yet.

Mr. Nelson: I do not believe, Mr. Examiner, I have had a ruling on Exhibit 9.

Trial Examiner Jaffee: It will be received.

(The document heretofore marked Petitioner's Exhibit No. 9 for identification was received in evidence.)

Q. (By Mr. Nelson) Coming back for a moment to the Ford Motor Company, there are two matters I think I omitted that I think are important and that should be put in, before we get too far from it. Since the filing and since the signing and delivery of the contract, what has been the history of your relations with the Ford Motor Company?

Mr. Dahling: Mr. Examiner, we have made no objections to a rather wide inquiry on the part of counsel for the Association in connection with the Ford Motor Company and other unions. The chief reason was that we did not want to delay the hearing. If we are going back into the Ford matter again, however, I would like to make a motion at this time in connection with all the testimony that relates to the Ford matter. The matter before the Board now is the Packard Motor Car Company, and not the Ford Motor Car Company. I now move that all of this witness' testimony with respect to the matters pertaining to the Ford Motor Car Company be stricken.

Trial Examiner Jaffee: I will call your attention to
105 the fact that on Board's Exhibit 3, the second to the last paragraph, I think it is, there appears the following language:

> "The history of the bargaining unit in the plant or in the industry should be disclosed."

Of course, as I said before, that does not necessarily mean that because it is in that exhibit it is automatically admissible. Nevertheless, it has been the Board's custom in the past and I believe still is, to take such evidence. I need not pass at the moment upon the degree to which it is admissible. That I assume cannot be determined in advance of proffered testimony. The motion to strike is denied insofar as the motion may be construed to be objections to pending questions. It is overruled in either event. The right is reserved to counsel for the Company to renew the motion at some subsequent stage of the hearing.

Mr. Dahling: May the same objection apply to all further testimony along the same line that has been objected to?

Trial Examiner Jaffee: Yes, I will assume that you will have a continuing objection to evidence with reference to the Ford Motor Company without having to so repeat it.

Mr. Nelson: The Examiner permits you to answer the question, Mr. Witness. Have there been any incidents since the signing of the contract and up to the present time?

106 The Witness: By incidents you mean strikes?

Q. (By Mr. Nelson) Yes, work stoppages or difficulties of that kind.

A. Yes, there has been. There was a work stoppage at the Bomber Plant on October 15, 1944. About 180 foremen left their jobs at noon in protest over a violation of our contract regarding seniority and demotions. I attended a meeting that same night of October 15 of the striking foremen and persuaded the afternoon shift to go to work. The following morning the day shift went back in and at noon on the 17th they attempted to strike again

but this time the officers were prepared for it and I personally called the Chapter president and the Chairman of the Bomber Plant and ordered them to keep those men on their jobs and to follow the grievance machinery as provided for in the contract, which they have done. On November 16, 1944, eleven foremen over the frame job in the rolling mill at the Rouge Plant struck in protest of the removal of a foreman and the Chapter officers were called in and settled it. The men were off their jobs from 8:00 A. M. to 11:00 A. M. The eleven men, and they were docked four hours for their action. We had one other incident, I do not recall the date, it was not a strike, although the newspaper carried a short item on it. It was here in Detroit—the newspapers called it a strike. About

107 100 or so foremen in the pressed steel building went to the superintendent's office in a body and protested demotions not in conformity with the contract. They did not leave the building, however, and as soon as the Ford Motor Company called me I got on the job with the othe officers and we had it settled in about an hour.

Trial Examiner Jaffee: What was that date?

The Witness: I do not have the exact date of that.

Mr. Nelson: The month?

The Witness: Well, that was probably July or August of 1944. It is since we signed the contract. The two most recent incidents that I have described a moment ago, I have the actual date on that.

Mr. Nelson: Counsel for the Company in whispered conversation here with me fixed about the third week in July, 1944 as the approximate date of that incident. I think I will be fair in stating that we all recognize the incident and know what it is. We are not just able to lay our hands on the precise date at this time.

The Witness: I would say that the latter part of July would be correct.

Mr. Nelson: They say the third week in July and that is near enough. There is only incident of that kind with eleven foremen.

The Witness: That incident was not the eleven foremen.

I do not know how many were involved but I think
108 over 100. The eleven foremen incident was the one of November 16th that I explained a moment ago.

Mr. Nelson: I see.

Q. (By Mr. Nelson) Also with respect to the Ford contract and the negotiations that arrived at it, I think you stated that these three men, Kellogg, Fenrich and Elliott, had been returned to their jobs. Now, you mean by that that so far as the Company was concerned, it opened the door for them to go back and gave them their back pay?

A. That is right.

Q. Did they go back? I overlooked asking you that, whether they actually went back.

A. Mr. Fenrich, one of them, went back. Mr. William Elliott was elected to the office of president of the Chapter and went on full time for the chapter but drew his back compensation from the Company. Of course, Mr. Fenrich, who did go back, drew back compensation from the Company. Mr. Kellogg did not go back and has not drawn his back compensation to date, because during his absence the Company eliminated the exact job he had performed and offered him a job of similar nature at the same rate of pay with the back compensation and he refused to accept it. In the meantime, he has gained employment with some other company and has not gone back to the
Ford Motor Company to even pick up his check,
109 which I understand is in the sum of $5,900, if I am not mistaken.

Mr. Donovan: How long has that check been made available to him?

Mr. Nelson: It is plain he is not a lawyer.

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

110 Trial Examiner Jaffee: On the record.

Q. (By Mr. Nelson): Mr. Keys, your testimony would indicate that now you have experience to some extent in the Association and in your work for it in the plants where foremen were involved before and after organization and before and after entering into contracts, is that correct?

A. That is correct.

Q. Well, taking the matter of contracts first, let me ask you first whether you observed any difference between the plants and their relationships towards supervisors before entering into a contract and after entering into a contract?

A. Yes.

Mr. Dahling: Just a moment, Mr. Examiner. I do not believe this witness has ever been sufficiently qualified to answer a question of that character.

Trial Examiner Jaffee: Will you read the question, please?

(Question read.)

Trial Examiner Jaffee: You may answer yes or no.

The Witness: Yes.

Q. (By Mr. Nelson): Now, have you served on practically all of the committees that have negotiated contracts for supervisors?

A. I have. I have been chairman of the only committees that have negotiated contracts in the past.

111 Q. And practically have attended all their meetings and negotiations with the employer?

A. That is correct.

Q. Did you also have a good deal to do with the wording of the contracts?

A. I did.

Q. And the subject matter of the contracts?

A. I did.

Q. The specific agreements arrived at in the contracts?

A. I did.

Q. In order to do that, did you acquire a wide knowledge of the situation of those respective plants with respect to supervision?

A. I did.

Mr. Donovan: Just a moment. Your Honor, I object to that question. I think it is too general. I think it is not based on testimony in the record. There has only been one small concern named here, other than the Ford Motor Company, and it was that one that caused some discussion as to whether that contract was relevant. Now, this witness is being asked if he did not get a very wide

knowledge in their contract negotiations. I think the question is objectionable in form, it is too broad, and it is capable of an unfavorable inference against the Respondent Company.

Trial Examiner Jaffee: The objection is sustained as
112 leading.

Q. (By Mr. Nelson): Well, as to the Ford Motor Company, you worked there for how many years yourself?

A. Seven years.

Q. Well, during that time—you were a foreman approximately seven years, or six years, rather?

A. I thought I was, as I stated this morning.

Q. And you observed—

Mr. Donovan (interposing): Just a moment. I do not want to object after every question is asked, but I have objected very little to leading questions and I think within reasonable limits one should permit some leading questions. I think this witness should be asked for his factual knowledge rather than being led too much by counsel.

Mr. Nelson: Very well.

Q. (By Mr. Nelson): Were you familiar with the situation in the Ford Motor Company with respect to supervisors before signing the contract?

A. Yes.

Q. And have you been familiar with the situation in the Ford Motor Company with respect to supervisors
113 since the signing of the contract?

A. Yes.

Q. If I ask you the same questions with respect to the United Stove Company, how would you answer them?

A. Yes, but not to the extent that I am with the Ford Motor Company.

Q. Well, is your knowledge of conditions there before and after the signing of the contract such that you could tell us any differences that exist with respect to supervisors before and after the signing of the contract?

A. Yes.

Mr. Donovan: Just a minute; I will object to that.

Mr. Nelson: He says he can. What are you going to do about that?

Mr. Donovan: I will object to that unless it is confined to the two plants mentioned.

Mr. Nelson: That is all I am asking him about.

The Witness: With respect to the Ford Motor Company.

Q. (By Mr. Nelson): Now, my question is, Mr. Keys, give us some of those differences and take whichever company you desire first. Which one do you want to take?

A. I will speak of the Ford Motor Company.

Q. All right, the Ford Motor Company, before and after the signing of the contract with respect to supervisors, and the operation of the Company; if you have any
114 information on the subject?

A. Before the signing of the first contract with the Ford Motor Company there was no standard set of classifications for supervisory employees. There are a number of buildings located fairly closely together in the Rouge, and at most of the buildings they had a different set of classifications for supervisory employees doing the same identical work, supervising the same types of work. The contract provided for six standard classifications to be used in all of the Ford Buildings and plants. Before the signing of the contract, the foremen were paid various wages or salaries for doing the same identical work, supervising the same type of people and same type of work, and the contract established standard sliding scales for these classifications. It equalized the moneys paid to the foremen for similar work performed. Prior to the signing of the first contract, supervision had no designation whatsoever, other than the classification decided upon by the superintendent of the building. They didn't even wear a badge that carried the word "Foreman" or "Supervisor." Following the signing of the contract, all the foremen were provided with a different type of badge showing their classification.

Q. While you are on that, Mr. Keys, is classification an important thing to a foreman in the performance of his functions?

115 A. The Company pays foremen according to how they are classified. Therefore, it is a very important thing to a foreman.

Q. And it is important that his classification should be certain, should be known to him and known to the men he supervises, is it?

A. Very important, yes.

Q. Now, resume where I interrupted you.

A. Prior to the signing of the contract, it is a fact that the Company would demote and did demote as many as three and four hundred foremen in a month's time and promote from the rank and file to foremen's jobs three to four hundred foremen during the same month. The Company, of course, was losing a lot of money that they had invested in foremen by doing this. Following the signing of the contract, an availability list and records were kept and a system put into effect whereby the superintendent of the building could not promote a person to a foremanship or remove from a foremanship any person without consulting with the foremen's office, because in many instances, in one building it would become necessary to demote foremen with years of experience and ability and put them back to work; whereas, in another building, right across the road, they were creating new foremanships because they needed supervisory employees. So they all had to clear through the foremen's personnel
116 office and now the man with the experience that is being demoted, instead of going back to the rank and file, moves over and takes the job for which he is qualified. And, of course, there was absolutely no grievance machinery prior to the signing of the first contract and one after the signing of the first one, but a very detailed grievance machinery provided for in the May 9th contract—was provided for in that contract. If a foreman had a grievance, regardless of the nature of the grievance, he had absolutely no one to go to except the superintendent who could make arbitrary decisions if he so decided, and it wasn't uncommon for foremen with years of seniority to be discharged or demoted without any consideration whatsoever. The grievance machinery has, of course, eliminated that to a great degree. Any foreman under the present grievance machinery having a grievance, can reduce that grievance to writing and it goes through the stages provided for in the contract.

Mr. Dahling: I did not wish to interrupt the witness during his long answer, but I would call your attention again to the fact that you are dealing with grievances here, you are dealing with a situation which is not in the Packard Motor Car Company and going very far afield. I move again that the long answer of the witness to
117 the last question be stricken as irrelevant and immaterial to any issues in this proceeding.

Trial Examiner Jaffee: Same ruling as before.

Q. (By Mr. Nelson): While you are on the subject of grievances, prior to the making of the contract, if the foreman himself were involved in the grievance, did he have any representative with him or would he have to confront management alone?

Mr. Dahling: Mr. Examiner, I must object to that. What machinery the Company might have, I do not see how that could have any relevancy on this matter of an appropriate unit.

Mr. Nelson: Mr. Examiner, I am trying to preserve Mr. Dahling's innocence of the grievances at the Packard Motor Car Company until tomorrow. We will get into the subject matter at Packard later.

Mr. Dahling: Which would likewise be objectionable, so far as this hearing is concerned.

Trial Examiner Jaffee: He may answer.

Q. (By Mr. Nelson): The question was, briefly, did foreman have any representative to assist him or did he confront the situation alone, whatever it was?

A. No, there was absolutely no grievance machinery, as such. The only channels that were available, to my knowledge, was that a man could go alone to his superintendent if he had the nerve to do so. I know a few
118 who did do it, but the unfortunate part of it is that foremen still had to work for the superintendent and if they went to the superintendent with a grievance, the superintendent became angry and made it very miserable for the foremen in the future. So the men carried their grievances around with them instead of attempting to settle them individually. That is why they joined the Foreman's Association.

Q. And that situation has changed, as you have indicated, by the contract through the operation of the grievance machinery?

A. Yes, and it has not only changed because of the grievance machinery, but the representatives of the Company themselves have taken an entirely opposite position and perhaps viewpoint as to what they did prior to the signing of the contract. In other words, the foremen right now, they take their grievances up and the Company has been very fair in giving honest decisions. Our records show that 98 per cent have been settled to the satisfaction of the aggrieved foremen.

Q. In other words, the fact that there is this machinery brings about a change on both sides, is that right?

A. That is right.

Q. Just the very fact that it is there?

A. That is correct.

Q. And you ascribe to that as important a place as
119 the operation of the grievance machinery itself?

A. Yes.

Q. Just the fact that you have it?

A. Just the fact that it is available, if needed.

Q. (By Mr. Nelson): Now, I take it, Mr. Keys, in speaking of grievances you have been speaking of the grievances of supervisors, is that correct?

A. That is all I have reference to, just to supervisors.

Q. You have not talked about the grievances of maintenance or production workers?

A. No.

Q. Grievances of maintenance or production workers involving a foreman, either?

A. Just the foreman's own grievances.

Q. Relating to the clasifications, wages, hours and conditions of labor of the foremen?

A. That is correct.

Q. Do you keep statistics of the number of grievances? Have you gotten far enough along so that you have a set of figures that represent roughly the result of grievance operation?

A. Yes. I do not have them personally, but the Ford

Chapter has them. They have a record and an analysis of the workings of the grievance machinery and various other things since the signing of the contract.

120 Q. Your testimony seems to indicate, Mr. Keys, that these grievances were settled now with a great deal less of disturbance, both physical and mental and otherwise; is that a fact?

A. That is the fact. Outside of those two incidents that I mentioned very briefly we have had no disturbances, outside of those two, to my knowledge.

Q. Now, Mr. Keys, in addition to the benefits to supervision from the established and recognized grievance machinery and the contract with the employers, have any benefits come to the maintenance and production workers as a result or incidental thereto? Does it result in any better conditions for the maintenance and production workers, and, if so, in what way?

Mr. Dahling: Mr. Examiner, I presume all this testimony is likewise subject to the objections we have made to certain specific questions. Whether it deals with Ford or whether it deals with other companies, that is. Now the witness testified, as I understand it, as to the Ford Motor Car Company and this grievance matter which we previously objected to was overruled. I do not recall whether I stated at that time or requested that any further questions along that line be subject to the same objection. I would like to make that position clear now.

Trial Examiner Jaffee: The question then arises
121 whether or not this is "along that line."

Mr. Dahling: I have in mind any question relating to grievances and the manner in which grievances in the past were settled or are now settled, in addition to the fact that the objection, of course, goes to the fact that all this testimony relates to another company and not the Packard Motor Car Company. There are two objections, one is that the matter of grievances has nothing to do with this particular proceeding and the second objection made was that things which may have happened at the Ford Motor Car Company or any of the other companies, are irrelevant and immaterial, as far as this proceeding involving the Packard Motor Car Company is concerned.

Trial Examiner Jaffee: Whether grievances or otherwise.

Mr. Dahling: Whether grievances or otherwise. I would not want to be forced on that later. I understand this testimony is taken subject to those objections?

Trial Examiner Jaffee: Yes. If there may be any question about your failure to object in the past in connection with matters you have just referred to, Mr. Dahling, I will assume you have made a timely objection thereto in the past as well as in the future.

Mr. Dahling: My purpose was not to object to each question because I have no wish to delay the proceedings.

122 The Witness: We have never in any of our conferences with the Ford Motor Car Company or in any of our agreements with them discussed or provided in any manner for the rank and file employees. They have all been confined to our own particular problems. However, my own personal experience has been that the Foreman's organization has created better fellowship in the plant and that the people working under the supervision of the foremen who are members of our organization have been doing a very good job of producing, which can be substantiated by the fact that the Company has been awarded the Army and Navy "E" on two or three occasions. The Bomber plant has been cited for its marvelous production. This was all produced under the supervision of the Foreman's Association of America, members and the production workers of the UAW-CIO.

123 Q. (By Mr. Nelson) I understand that this contract with the Ford Motor Car Company has been offered in evidence here and was endorsed by the National War Labor Board so to speak.

A. The contract in its entirety has been approved by the National War Labor Board.

Mr. Dahling: If that is a fact, the best evidence would be the record of the Board and not this witness' testimony.

The Witness: We have the records and we will be glad to submit them.

Mr. Nelson: I will comply with the suggestion of counsel and give it to them in writing. I am not able to do it

just now. If I may reserve that right until I have had an opportunity.

Trial Examiner Jaffee: Yes, you may.

Q. (By Mr. Nelson) Mr. Keys, I suppose the Company itself would be the best witness on this but have you received any benefit flowing from the operation of this contract and its effect upon the supervisors and hourly rated employees, tending to benefit the Company. You have indicated some increase in production. Do you have anything else in mind that would seem to make the task of the Company less difficult and more fruitful?

A. Well, I think that the benefit that the Company
124 has derived from this contract with the Foreman's Association is that it definitely increased the efficiency and increased the production and naturally there were more profits. When the Company benefits, all of the employees benefit eventually or indirectly. So, if the Foreman's Association has been instrumental in increasing the efficiency, which I think it has, and which I think I can prove, if necessary, naturally, the rank and file employees are gaining also, in the matter of better wages and better working conditions and so forth. We do know this, that prior to the signing of the contract in the past there have been a number of incidents where the rank and file employees and the foremen have been engaged in fisticuffs and I have not heard of any since the signing of the contract. I am not familiar with any.

Q. That would indicate to you that there is a better relationship between supervision and the men they supervise?

A. There is a better spirit of cooperation definitely.

Q. Now, coming to the Packard Motor Car Company, there came a time when the foremen at the Packard Company evinced an interest in the Foreman's Association, did they?

A. Yes.

Q. Do you remember about when that was?

A. I cannot recall the exact date that they approached the Association and requested membership but I can
125 tell you that the chapter was chartered by the Association on October 13, 1942.

Mr. Nelson: I will ask the Reporter to mark that paper, Exhibit 10, Petitioner's Exhibit 10.

(Thereupon the document above referred to was marked Petitioner's Exhibit No. 10 for identification.)

Q. (By Mr. Nelson) Is Exhibit 10—Well, you tell us what it is. Take a look at it.

A. It is an application for a charter addressed to the Membership Director of the Foreman's Association of America and is signed by the foremen employees of the Packard Motor Car Company.

Mr. Nelson: I have only the original of this and I offer it in evidence. I offer it to counsel for their examination.

Mr. Donovan: No objection to this exhibit but I cannot make the date of it out.

Mr. Nelson: May it be received, Mr. Examiner?

Mr. Karasick: May I see it, please?

Mr. Dahling: May we have a copy of this?

Mr. Nelson: Yes, we will have copies to furnish you.

Trial Examiner Jaffee: I trust your copy will bear a legible date?

Mr. Nelson: I will give your Honor the date in just a moment.

126 Trial Examiner Jaffee: All right.

Mr. Karasick: No objection.

Trial Examiner Jaffee: It will be received.

(The document heretofore marked Petitioner's Exhibit No. 10 for identification was received in evidence.)

Mr. Nelson: Petitioner's Exhibit Number 10 is on the letterhead of the Association and it is without date excepting that there is noted at the bottom that the charter was granted 10-13-42, which I now show the Company's counsel. That statement applies to both sides of the paper; as it will be observed, the paper bears at least the names and addresses on both sides. I think I should say there is another date on the face of the paper which is 10-11-42, which is presumably the date of filing. The charter was granted two days later on the 13th.

Q. (By Mr. Nelson) Mr. Keys, while we are on that subject, was the charter granted?

A. Yes, on October 13, 1942.

Mr. Nelson: I ask the Reporter to mark this Exhibit 11, Petitioner's Exhibit 11 for identification.

(Thereupon the document above referred to was marked Petitioner's Exhibit No. 11 for identification.)

Q. (By Mr. Nelson) Is that a true copy of the charter as granted?

A. Yes.

127 Q. Well then—

Mr. Nelson: I offer Exhibit 11 in evidence and I offer copies of the exhibit to counsel for their examination and the original to the Trial Examiner.

Mr. Karasick: No objections.

Mr. Dahling: No objection.

Trial Examiner Jaffee: It will be received.

(The document heretofore marked Petitioner's Exhibit No. 11 for identification was received in evidence.)

Q. (By Mr. Nelson) Did you have anything to do with the organization of the Packard Chapter personally, Mr. Keys?

A. Nothing beyond talking to the original men that were seeking organization. So far as going out into the plant and organizing anything, to that extent, no.

Q. That is, you talked to men who came from the supervisory group at the Packard? Where did they come to see you?

A. At that time they would all have to come to what is now the Ford Chapter office, 5746 Shaeffer Road, Dearborn. Our membership director, on any lead like that would immediately contact the people. Very frequently they held meetings at other places. All of our leads at that time came to 5746 Shaeffer Road, our headquarters at that time.

Q. That is in Dearborn, which is west of Detroit and the Packard Plant is in the northeasterly section of Detroit?

128 A. That is right.

Q. But you did have to do, didn't you, Mr. Keys, with the filing of the representation petition with the National Labor Relations Board on behalf of the Packard Chapter?

A. Yes, I handled that matter.

Q. You signed the petition, didn't you?

A. Yes.

Q. And as the files show here, filed them?

A. I filed it.

Mr. Donovan: Are you speaking of the first petition now?

Mr. Nelson: I am speaking of the petition filed shortly after the organization of the Chapter.

The Witness: That was filed on January 15, 1943.

Mr. Karasick: For the record, the case number is 7-R-1279.

Q. (By Mr. Nelson) Did you make a demand on the Packard Motor Car Company previous to that in writing?

A. On November 27, 1942, I wrote a letter to Mr. C. E. Weiss, Industrial Relations Manager, and asked him for a conference. I received a letter dated December 1, 1942 from Mr. Weiss stating the time and place that I could meet him. In his letter he stated he would be glad to see me individually on December 4, 1943. There was nothing in the letter in the form of a demand other than the

129 request for a conference. I got the answer setting the time and place for the conference.

Mr. Nelson: Mr. Examiner, in my function as alarm clock for counsel for the Company and for the Reporter, I am under the necessity of speaking up. I am not saying a word for myself. I do not know what disposition Your Honor will make to a petition like that.

Trial Examiner Jaffee: Well, since you seem to be under pressure, I will yield under the accumulated pressure and we will recess at this time until tomorrow morning at nine-thirty A. M. in the same room.

(Whereupon, at 4:30 o'clock p. m., Monday, December 18, 1944, the hearing in the above-entitled matter was adjourned until tomorrow, Tuesday, December 9, 1944 at 9:30 o'clock a. m.)

130 Rooms 715-716 Federal Building,
Detroit, Michigan,
Tuesday, December 19, 1944.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 A. M.

Before:

Samuel H. Jaffee, Trial Examiner.

132 PROCEEDINGS.

Trial Examiner Jaffee: The hearing is in order, gentlemen. Are we ready to proceed?

Mr. Karasick: Mr. Examiner, during the course of yesterday's session, Mr. Donovan requested a personal copy of the Trial Examiner's Statement in "R" cases admitted in evidence as Board's Exhibit 3. I obtained a copy of that document for Mr. Donovan and I am going to give it to him now.

Mr. Donovan: Thank you.

Mr. Nelson: Mr. Examiner, I believe you have Exhibit Number 10, which is an original, of which we have no copy. We would like the release of that so that we may have a photostat made.

Trial Examiner Jaffee: You say the exhibit is in my possession, you mean it is in the possession of the Reporter. A photostatic copy may be substituted.

Mr. Nelson: We will take it now and be responsible for it and furnish the photostat. Yesterday there was some controversy concerning the first Constitution of the Foreman's Association. I now offer it as Petitioner's Exhibit 4.

Trial Examiner Jaffee: I might say, to keep the record straight, that you have already offered it and it already was received. The copy you now have may be received because you returned the original to Mr. Donovan.

133 Mr. Nelson: This was the first one. There will be three in evidence now.

Trial Examiner Jaffee: I will stand by my statement. I know that Mr. Donovan gave it to you and you had it marked and then returned it to him.

Mr. Karasick: I believe that was Petitioner's Exhibit 3. There was no copy of Petitioner's Exhibit 4 available. That is the document Mr. Nelson is now speaking of.

Trial Examiner Jaffee: Petitioner's Exhibit 4 was the number which was reserved. It is received in evidence.

(The document heretofore reserved as Petitioner's Exhibit 4 for identification was received in evidence.)

Mr. Donovan: I understand that there is not a copy of this available for me. I will be glad and content to use certain portions of the exhibit when the time comes to question witnesses about it.

Mr. Nelson: I will have one here available for your own personal use. I will leave this one with the exhibits, Mr. Examiner.

Mr. Karasick: Do you have any extra copies of that?

Mr. Nelson: I will dig up one or two to have for use here.

Mr. Karasick: Thank you.

Mr. Donovan: May I ask the Board counsel if he has an extra copy of the exhibits which contain the list of
134 petitions to the Board and the disposition of them? We have only one of them and we would like to have another one.

Mr. Karasick: The exhibit you are referring to is an exhibit of the Petitioner.

Mr. Donovan: I think it is the Petitioner's exhibit, yes, that is right.

Mr. Karasick: I do not believe the Board has any such exhibit.

Mr. Donovan: Mr. Nelson, do you have a copy?

Mr. Nelson: We are having copies made this morning. We were not able to keep a secretary last night to do it. Oh, I see it has been done and we will furnish them now. I did not know it had been done.

Trial Examiner Jaffee: Call your witness.

ROBERT H. KEYS

resumed the stand, was examined and testified further as follows:

Direct Examination (Continued).

Q. (By Mr. Nelson) Mr. Keys, at the conclusion of the yesterday evening session we were inquiring about your connection with the organization of the Packard Motor Car Company Chapter of the Association. Were you aware of the organizing effort there and did you take a part in them?

A. Well, as I stated yesterday, Mr. Nelson, they contacted the Association and asked that a representative be sent out. Meetings were held but I did not take too active a part in the actual organizing other than acting in an advisory capacity.

135

Q. You knew of the organization, didn't you?

A. Oh, yes.

Q. When the time came for a demand upon the Employer, the Packard Motor Car Company, for recognition of the Chapter as the bargaining agent for the supervisory force, did you take part in that?

A. Yes, I wrote the first letter to the Packard Motor Car Company addressed to Mr. C. E. Weiss, Industrial Relations Manager on November 27, 1942. In this letter I stated that we represented a majority and would like to have a conference. Mr. Weiss answered that letter December 1, 1942 setting an appointment for December 4, 1942.

Q. Did you keep that appointment?

A. Yes, I kept that appointment, accompanied by Mr. Brown, one of our Executive Board members.

Q. And who was there on behalf of the Company?

A. To the best of my recollection, at that first meeting, there was just Mr. Weiss. I am not sure whether Mr. Bird was there or not. I know on subsequent meetings there was a Mr. Bird present, but I can't remember whether he was there at the first meeting.

Q. What was the subject of the conference?

136

A. We discussed the aims and purposes of the Association and, of course, we explained to the In-

dustrial Relations Manager, Mr. Weiss, that we represented a majority and we wanted to start negotiations for recognition and collective bargaining, and he stated he thought we were probably—or, if not, at that time,—a part of the CIO, we would be very shortly and, of course, we denied that and he asked to have a few days to think it over. So on December 10, 1942, Mr. Weiss sent me another letter stating he would be glad to meet with our committee on December 15.

On December 15, I kept the appointment and I was acompanied by Mr. Elmer Ross, who was our Membership Director at that time, and we talked with Mr. Weiss about the recognition of the Association, grievances, and so forth.

Q. These meetings took place in the offices of the Company?

A. In Mr. Weiss' office at the Packard Motor Car Company.

Mr. Dahling: Mr. Examiner, listening to this testimony, apparently this all took place before the first Petition for Representation was filed.

The Witness: No, Mr. Dahling—yes, I beg your pardon, it was.

Mr. Dahling: Well, that being the case, I object to any testimony covering that particular period inasmuch as following these meetings there was a petition filed. Now,

137 we are here on a new petition which was filed October 20, 1944. That petition alleges that the Employer named refused to recognize the Petitioner as the exclusive bargaining agent of all the employees. That fact has already been established. There is no occasion to go into what transpired before the first petition was filed. It is incompetent and irrelevant as far as this proceeding is concerned.

Trial Examiner Jaffee: He may answer.

Mr. Dahling: And may that objection continue as to all testimony of this character, prior to the date of the first Petition for Representation?

Trial Examiner Jaffee: Yes.

The Witness: On the day of December 15, when we kept

our appointment with Mr. Weiss, we had some discussion with him, and I believe Mr. Bird was in on that meeting also representing the Company. And then we went up to Mr. George Christopher's office.

Q. (By Mr. Nelson) Do you know what office he held?

A. Yes, he was President of Packard Motor Car Company.

Mr. Dahling: May we have the exact date of that meeting?

The Witness: December 15.

Q. (By Mr. Nelson) Morning or afternoon, Mr. Keys, if you remember?

A. Afternoon.

Q. By "we"—you say "We went up to Mr. Christopher's office"—would you tell us just who it was?

138 A. Yes. Mr. Elmer Ross and myself representing the national organization, called on Mr. Weiss, but there was a committee of foremen selected by the foremen in the Packard Plant, and this committee was composed of Mr. Prosper Traen, Mr. Leonard Lempke, Mr. Tom Pawlowski and Mr. Jim Wilkins, and they met with us up in Mr. Christopher's office, and again the aims and purposes of the Association were discussed and no agreements arrived at.

Then on January 15, 1943, I filed a petition with the National Labor Relations Board requesting an investigation and certification.

On February 1 I was called to the office of the National Labor Relations Board, of the Seventh Region here in Detroit, and Mr. Weiss, representing the Packard Motor Car Company, was also called, and I presume by the Board; he was there. We discussed the Petition and we agreed to have an election. We discussed the unit, those that would be eligible and so forth, and I believe the Company was asked to submit certain records, and I think as I recall it, a subsequent meeting was held where they produced the records, and we agreed on the unit.

Q. By "we" you mean whom?

A. Mr. Weiss.

Q. And yourself?

A. The Field Examiner, Mr. Irwin Bannisch, repre-
139 senting the Board, and myself.

Mr. Dahling: Pardon me, I do not wish to be making continuous objections, but the witness says that they agreed on certain things. I suggest we have the substance of the agreement and not his construction of any agreement.

Mr. Nelson: Very well, I think that is proper and we will comply.

Q. (By Mr. Nelson) Mr. Keys, you stated, as Mr. Dahling said, "We agreed." Will you tell us first who it was that did the talking?

A. Yes. Mr. Irwin Bannisch, representing the National Labor Relations Board, Mr. Weiss, representing the Packard Motor Car Company, and myself, representing the Association.

Q. And you were in the offices of the Seventh Region?

A. In Mr. ~~Irwin~~ Bannisch's office of the Seventh Region of the Board.

Q. Now, instead of telling us the substance of what you think took place, if you can, tell us what was said and who said it.

A. Well, Mr. Bannisch, of course, asked if the Company would agree to a consent election. That was discussed between Mr. Weiss and Mr. Bannisch and it was Mr. Weiss that said yes, if we can agree upon the unit. Then I was asked what I considered to be the appropriate unit.

Q. And who asked you that?

140 A. Mr. Bannisch, and I stated we considered assistant foremen, foremen and general foremen as the appropriate unit. Mr. Weiss objected to the general foremen being a part of the unit. We discussed that back and forth, and finally arrived at the solution of excluding twelve general foremen, because Mr. Weiss stated that their authority and duties were somewhat different from the other general foremen.

Q. In other words, there were more than twelve general foremen at the factory, is that right?

A. At that time, as I recall, we thought there were about ninety.

Q. By "We" you mean you and Mr. Weiss, as you discussed it there before Mr. Bannisch?

A. That is right.

Q. That was your estimate of the number of general foremen?

A. That is correct. Bear in mind, this was before any records were brought down. At a subsequent meeting, records were brought down.

Q. As you sat there and discussed back and forth between you and Mr. Weiss, words to the effect that there were approximately 90 general foremen—

A. (Interposing) To the best of my recollection, that is correct.

Q. Did Mr. Bannisch hear that?

141 A. Mr. Bannisch heard it because he was sitting right there.

Q. And twelve of those ninety Mr. Weiss wanted to remove from the jurisdiction of the Association, so to speak?

A. Well, during the first part of our conversation he wanted to exclude all general foremen. But these twelve we finally agreed upon to be excluded. According to Mr. Weiss' statement to me, he sort of felt that they had charge of more than one department and were acting in the capacity of assistant superintendent.

Q. That is according to Mr. Weiss' statement to Mr. Bannisch and you?

A. According to his statement. So we agreed there would be twelve excluded.

Q. You consented to excluding twelve?

A. That is right. consented and Mr. Bannish prepared the papers and we signed it. The language used in the papers, instead of setting out the twelve and naming them, said, "excluding certain general foremen." As I recall it, there was a subsequent meeting in which the Company brought down the records and the cards were checked against the payroll. The election was set for February 24, 1943.

Q. You say it was checked against the payroll? Where was that done and who did it?

A. That was done in the office of the National Labor

142 Relations Board by Mr. Bannisch.

Q. From records produced by Mr. Weiss for the Company?

A. Well, it was my understanding that the Company produced the records for Mr. Bannisch's inspection.

Q. Go ahead, Mr. Keys.

A. We discussed where and when the election would be held. It was decided that the election would be held on February 24. The Company would not permit the election to be held in the plant. Mr. Weiss insisted that it be held outside. Of course, we discussed the fact that it was February and very cold and that it would probably be a nasty day. But, nevertheless, the Company insisted that it be held outside and on February 24 the National Labor Relations Board set up a voting booth out near the Packard Company and the foremen lined up after working hours and voted. The results of the election were 486 for the Association, 2 against. The Company challenged 130 ballots. That, of course, came as a surprise to us. We had no idea that they would challenge 130 ballots. Everything had been agreed upon. There were 13 void ballots. Following that, I received from the National Labor Relations Board a certification of the election results.

Trial Examiner Jaffee: You mean from the Regional Director?

The Witness: From the Regional Director, yes, sir.

143 Q. (By Mr. Nelson) Was the Chapter finally certified as the bargaining agent of the supervisory force of the Packard Motor Car Company?

A. The only documents that I received from the National Labor Relations Board, the Seventh Regional Office, was the election results.

Q. Now, what intervened? What followed the election and certification that you mentioned?

A. We had another meeting with Mr. Weiss.

Q. By "we" whom do you mean?

A. The Association Committee, myself, Mr. Jim Wilkins, Mr. Tom Pawlowski, Mr. Leonard Lemke, and Mr. Prosper Traen, met with Mr. Weiss and Mr. Bird following the election and they refused to bargain with us.

Q. Where did you meet?

A. In Mr. Weiss' office in the Packard Motor Car Company.

Mr. Donovan: Let's have the date of that meeting.

The Witness: I am sorry, I cannot give it to you. Perhaps one of the members of the committee could give it to you.

Q. (By Mr. Nelson) Can you give us the month? How long after the election?

A. I would say within two weeks.

Q. And you met in Mr. Weiss' office?

A. Yes, sir.

144 Q. Tell us in substance what was said.

A. Well, we shook hands and passed a few remarks back and forth, complimentary to each other. We stated we were ready to start negotiations for a contract. Mr. Weiss said they would not bargain with us if we included general foremen in the unit. So we spent the next hour or so arguing about the fact that they had agreed to exclude twelve and now they wanted to exclude them all. The result of the meeting was absolutely nill. They wouldn't agree and we wouldn't agree. The entire amount of time spent at that meeting was on the discussion of general foremen.

Q. Whether they should be included in the bargaining unit?

A. They argued that they shouldn't and we argued that they should. We wanted them to keep their word. We were not accustomed to having people promise us one thing and do something else and so forth. Mr. Weiss said, "No, they wouldn't include the general foremen even though they agreed to it in the consent election agreement".

Q. Finally, I suppose, your committee withdrew and went away?

A. I left and I am quite sure the committee left at the same time I did. That was my last meeting and that is as far as I can tell you about the election and so forth and the meetings.

Q. And you do not have any personal knowledge
145 of any subsequent event as between the Chapter and the Company?

A. The only personal knowledge I have is that the Committee attempted to meet with the Company's repre-

sentatives following the meeting which I just described. What success they had or what the results were I have no personal knowledge.

Mr. Nelson: We offer this witness for cross-examination.

Mr. Donovan: Mr. Trial Examiner, with your approval and with counsel's approval we would like to defer this particular cross-examination until a little farther along in the case and until we have had the transcript. I do not think we will have occasion to ask that as to any other witness. Owing to the shortness of time we have had, we do prefer to do that unless there is objection on somebody's part.

Mr. Nelson: I think that will place the Petitioner at some disadvantage if we agree to that. We will not know how to plan our showing of witnesses or anything else unless we have some idea of the scope of the cross-examination, frankly, and the subjects that will be touched by it. I will say to counsel that counsel is aware of the fact that we have a number of men who probably ought to be at the factory. They are here for this hearing and we are trying to keep that number down and cause as little disruption as possible out there. This is not in the nature of a complaint or anything like that. We are just merely trying to do it that way. I think it will be
146 much more orderly if counsel cross-examines the witness as offered.

Mr. Donovan: May I ask how many more foremen employee witnesses he has, approximately?

Mr. Nelson: I think about twelve is my recollection.

Mr. Donovan: We would like to ask the Trial Examiner to have counsel proceed with those witnesses and postpone this cross-examination until, say tomorrow, and that will accelerate the time in which the gentlemen would be able to return to the plant, as Mr. Nelson just mentioned. I do think, Mr. Examiner, inasmuch as this situation, frankly, is rather a broad and important one that the Examiner's time would be saved if counsel were unable to obtain any adjournment of this cross-examination. Counsel were unable to obtain any adjournment beyond yesterday morning, which they rather badly needed. I

do not think the deferment of this cross-examination would disturb this proceeding very much. We ask the coöperation of the Trial Examiner for reasons that have to do with our responsibility to our client.

Trial Examiner Jaffee: A short answer to that is that I have to consider your convenience as well as the convenience of the party putting in their case. I have to balance the two. I will be happy to agree if counsel for the Association agree, despite the fact that in a normal course cross-examination follows immediately. Since it
147 disrupts his presentation, I have to take his word for it at the present stage of the proceeding and I do not see what else I can do.

Mr. Donovan: Mr. Trial Examiner, I realize that this is a matter well within your discretion. Ordinarily, that would be the normal course. We would like to have the benefit of reading the transcript. We are taking daily transcript and we would like to have the benefit of reading the transcript as to this one particular witness. I believe this is in the realm of the Trial Examiner's discretion. In view of the nature of the importance of the case, that may weigh rather heavily. This affects potentially the whole foremen's setup in a mass production industry in Detroit, which, after all, is more or less the capital of that rather important industry. Right now they are all engaged in war work. We would rather not ask and do not want to ask this, unless we have to, for a break in the session, sufficient to permit counsel to do some necessary thing, such as I have asked for. This is really an urgent and important matter to the Packard counsel. I believe that the foremen witnesses who want to go back to the factory could be used. I realize Mr. Nelson does not definitely agree to it, but I still do not think it is as disturbing a thing here as he claims it is to call upon the stretch of the Trial Examiner's discretion to grant the deferment of the cross-exam-
148 ination.

Mr. Nelson: We are going to keep the foremen here until they have finished with Mr. Keys.

Mr. Karasick: May I make a suggestion? I think per-

Trial Examiner Jaffee: The request is denied. Proceed. However, I may say that I had in mind adopting the suggestion of Mr. Karasick, although not in quite perhaps the same language. I would suggest that after you finish the present cross-examination of Mr. Keys, that if it develops you have forgotten something, Mr. Keys may be recalled.

Mr. Donovan: Well, we would like the privilege of recalling him later if it is necessary or advisable.

Trial Examiner Jaffee: I do not want any misunderstanding. If there is something you have forgotten,
152 you may recall him for further cross-examination. Of course, you can always call him back if you want to. I do not suppose it makes any practical difference in either event.

Cross-Examination.

Q. (By Mr. Donovan): Mr. Keys, in giving your testimony yesterday, you said, I believe, that you started with the Ford Motor Company as a worker?

A. Yes.

Q. And that was at about what time?

A. That was January 19, 1935.

Q. What definitely did you hire out as and what did you do when you went with the Ford Motor Company?

A. Well, I stood in line with the employment office—at the employment office, and when they came out and asked for drill press operators, why, I said I was a drill press operator, so they put me on drill presses.

Q. You were a drill press operator?

A. Yes.

Q. And you were hired?

A. Yes.

Q. And you were paid on an hourly rate, I assume?

A. 62½ cents an hour.

Q. Was this at the Rouge Plant?

A. Yes, I went into the Motor Building.

Q. And into a department of that building?

153 A. Yes, Department 751, where they machine the gears for the transmissions.

Q. How many men were in that department?

A. Well, I don't know exactly, but there must have been—

Q. (Interposing) Just approximately.

A. (Continuing) —two thousand, perhaps, on three shifts.

Q. Were you segregated into any particular group of those men in that department?

A. Well, I was put on a drill press for the first two or three days, then they put me on gear burnishers, then they put me on the Bullard. I was moved around quite rapidly.

Q. Who gave you the directions that you described?

A. I do not know—my foreman gave them to me.

Q. Well, your foreman did, then, did he not?

A. Yes.

Q. Did you find they had foremen in the Ford factory?

A. Yes, we have organized about eight thousand of them.

Q. But you did no organizing in 1935, did you?

A. No.

Q. You found yourself under a foreman when you went into that factory, did you not?

A. They called him a straw boss.

Q. Would you say he was or was not the equivalent of a foreman, as you understand the word "foreman"?

A. I would say he was an assistant foreman.

Q. But you had a foreman over you, did you not?

154 A. Yes.

Q. And he gave you directions; did he not?

A. Yes.

Q. And he did that on behalf of the Company, did he not?

A. I assume so. I never asked him and he never told me.

Q. Well, that is your honest opinion, is it not?

A. Yes, he was doing a job for the Company.

Q. Did it appear to you at the Ford Motor Company that the Ford Motor Company had employees like that to give you orders in order to run the operation of its business, as you saw it?

A. I didn't get the question.

Mr. Donovan: Would you read the question, please?

(Question read.)

haps a procedure could be worked out to serve the convenience of both parties here. Perhaps it would be convenient for the Company and for Mr. Nelson, if the Company were to conduct its cross-examination of Mr. Keys now, with the understanding that after they have had an opportunity to go over the first day's transcript, since they are getting daily copy. They can see after the session what Mr. Keys testified to yesterday, and they will have a right to recall Mr. Keys for further cross-examination on any subject they so desire. If that way both the demands of Mr. Donovan and Mr. Nelson can perhaps be met and the case can proceed more rapidly.

149 Mr. Dahling: Mr. Examiner, I think it should be called to the Board's attention, in connection with this request that the cross-examination of Mr. Keys go over to a later date, that the petition in this case was filed with the National Labor Relations Board, the Seventh Region, by the Petitioner, the Foreman's Association of America, on October 20, 1944. The Respondent was first advised of this filing on November 24, 1944, at which time it received a letter, setting a hearing before Mr. Bowen, the Regional Director, on November 25, 1944. Mr. Denison and Mr. Binns of Packard Motor Car Company and I attended that meeting. At that time we stated that this was an important case and we should have time to prepare. Mr. Bowen stated that the case was set for hearing for December 4th. We again insisted that that was not giving us time to prepare, and he stated that he would adjourn it for a week, but that was all, and only if in writing we requested such an adjournment, which was done.

On the Friday of the following week, which would be about the 8th or 9th, Mr. Karasick of the Board called me and asked if I had any objection if the Board adjourned it another week. I told him I certainly had no objection; that the entire matter should go over longer and should go over the holiday season, in view of the work to be done. He stated, however, it would only

150 go over until the 18th. I consented to that adjournment.

On about the 16th, when it was apparent there was still additional work to be done, particularly inasmuch as associate counsel were to come in to the case, I talked with Mr. Meder, and I am informed this is the situation: He called Mr. Bowen for a further adjournment from the 18th until at least the week of December 26th, or preferably later. It is my understanding that Mr. Bowen did not oppose the adjournment, but took the position that he would want Washington to pass on it. By Washington, we assumed he meant the National Labor Relations Board at Washington. Consequently, a wire was sent to the Board on Friday of last week, requesting this adjournment. It was not until Saturday afternoon, about 4:30, not having received any reply from the wire, that I called Mr. Smith, the Chief Examiner, asking him what had happened to it, and he informed me a wire had been sent. I subsequently, on the same day, at about five o'clock, received the wire, which reads as follows:

> "Re Packard Motor Car Company, 7-R-1884, your telegram of December 14th requesting further adjournment has been considered by the Board as appeal from refusal of Regional Director to grant such request. In view of the prior adjournments and the tight scheduling of work of our Trial Examiners, the Board is denying your request for further adjournment."

151 Now, Mr. Examiner, I do not know why since the petition was filed on October 20th, that the Packard Motor Car Company was not notified sooner. The Foreman's Association has had since October 20th, or, from the time they decided to file this petition, to prepare for this proceeding, and yet the Respondent, when first called on November 25th, was told that it had to go to trial on December 4th, and I have recited the subsequent events.

Now, this is an important proceeding, it is important not only to Packard but to the industry, and in view of these facts, we frankly considered it unfair and unreasonable to be forced into this hearing. And for the reasons I have stated, we feel that we should be permitted at this time to defer this cross-examination.

Q. (By Mr. Donovan) And the foremen, whoever they may be, from time to time gave you different assignments, taking you into different parts of the plants or in slightly different operations, did they not?

A. Yes.

Q. You considered that those orders were given to you to be carried out, did you not?

A. Yes, I had to, if I wanted to work.

Q. At that time, were you a member of any labor organization?

A. No.

Q. And have you ever been a member of any labor
155 organization excepting the F. A. A.?

A. Never.

Q. What did you say your hourly rate was when you started?

A. 62½ cents an hour.

Q. How long did you make 62½ cents an hour?

A. Oh, I think for about six months.

Q. Were you raised in rate then?

A. At about the end of my sixth month, somewhere around that time, they asked me if I would like to go down in the piston job. They were developing a new job and that was a job on which I had a possibility of getting a promotion, so I went down on the piston job and I didn't get any promotion and I didn't get any raise. Subsequently I did, but not at that immediate time.

Q. What did you do on the piston job?

A. Well, when I went on the piston job at first, there was nothing in there but a couple of lathes and a couple of drill presses, and I operated a lathe, drug stock around, done everything they wanted me to do.

Q. Were you a skilled operator at that time?

A. No, I wouldn't consider myself as such.

Q. Just an ordinary worker?

A. Just an ordinary machine operator, just average.

Q. And the things that you did in that—the things you did on that job were not skilled operations?

156 A. No.

Q. They consisted definitely of just what, now?

What did you do every day during the time you were there?

A. Well, I did many things. As I told you, mainly, I carried stock back and forth; there was no conveyors. You must bear in mind, Mr. Donovan, there was nothing there but two lathes and a couple of drill presses. We had to do everything by hand. We filed burrs by hand with files, and so forth.

Q. This would still be in 1935?

A. Yes, that would be in about the fall of 1935.

Q. How did you find out what you were to do in this new department?

A. My foreman told me.

Q. And you took directions again from a foreman then?

A. Certainly.

Q. How long were you at this more or less miscellaneous work that you just described?

A. Well, until they began to move machinery in. They purchased large Centerless grinders, millwrights came in and they installed conveyors. That probably took two or three months, and that's when they told me they were going to make me a straw boss.

Q. What time were you made a straw boss?

A. I can't remember the exact date, but it would be
157 somewhere in the fall of 1935.

Q. Who told you you were to be a straw boss?

A. The foreman.

Q. You understood a straw boss to be what at that time?

A. An assistant foreman.

Q. He was an assistant foreman?

A. He was the lowest classified supervisory employee.

Q. You regarded him as a part of supervision, did you?

A. Certainly.

Q. So you believe you became a part of supervision as early as the fall of 1935?

A. I did.

Q. And did you find that as a straw boss that it became necessary for you to give any directions to workers?

A. Yes.

Q. Did you give such directions?

A. Yes.

Q. Will you give us an example of what sort of directions you did give? Did you then have men under you?

A. Yes, a few.

Q. What sort of directions did you give to them?

A. Well, I would say, "Pick up that box from that machine and carry it over and set it down at this machine," and I would say, "You are not doing that operation right, let me show you how to do it," and I would check
158 their time in the morning and I would check their time at night.

Q. You had some authority, then, that you did not have prior to that time?

A. Well, I don't know whether I considered it as authority or not. I was given certain duties to do and I performed them.

Q. Well, but up to this time you were appointed straw boss, you had not been giving directions to other workers; you took them from your foreman, is that right?

A. That's right; I still took them from my foreman.

Q. But you also gave directions of your own to others?

A. I gave very few directions of my own. I had a foreman over me, and he had supervision over him.

Q. But you had men under you to whom you did give definite directions?

A. Yes, I was being paid to supervise them.

Q. That is right, and they took your directions and performed them?

A. Sometimes they did and sometimes they didn't.

Q. They did not always carry out your directions?

A. No.

Q. Why not?

A. Because they were organizing at that time?

Q. Did that make them hard to handle?

159 A. No.

Q. But you say they did not always follow your directions?

A. Sometimes I didn't even follow the directions of my foreman, because two-thirds of the time they were so awful you didn't know what you were doing.

Q. You did not like the way management was conducting the operations of that plant?

A. I definitely didn't. I thought they stunk.

Q. Did you not always carry out directions, even though you did not like them?

A. Well, to the best of my ability, yes.

Q. Even though they stunk?

A. Right.

Q. And you passed those orders on to your men, even though they stunk?

A. That's right.

Q. And sometimes the men did not like them and did not obey them?

A. That is right, and—

Q. (Interposing): Wait a minute. On those occasions did you have occasions to recommend disciplinary action for any man not following your orders?

A. I presume I could; I never did.

Q. You never did?

A. No.

180 Q. Do you think you should have?

A. No.

Q. In that sense you did not feel you could act for management where it was against your better judgment as a supervisor?

A. That's right.

Q. And you did not do so?

A. No. Do you want to know why?

Q. Well, your counsel can pick you up on any questions he wants to, Mr. Keys. I prefer to have you answer my questions that I asked you just now.

A. Okay.

Q. How long did you continue as straw boss, passing or giving directions to this group of men of which you spoke?

A. I assume from that first promotion I just described I was a foreman up until I left. However, as I said, the records have been investigated and they don't show that. As a matter of fact, they show I wasn't a foreman for a period which I know nothing about, because I was doing

the same work and getting the same rate of pay. But from that day on I assumed I was a foreman until I left Ford's.

Q. When did your rate change from 62½ cents an hour? Did you ever get a raise?

A. Oh, yes, but I don't recall the exact dates.

Q. Give us an idea, as near as you can. When did
161 you step to 62½ cents an hour, with respect to the year 1935?

A. Well, it's only a guess. I would say the latter part of 1935 I got a five-cent an hour raise.

Q. You went to 67½ cents an hour in 1935?

A. No, I went to $6.00 a day, if I recall correctly. I think the Company went back on the $6.00 a day plan and everybody got a raise in that period.

Q. On an hourly rate, that would be the equivalent of—

A. (Interposing): 75 cents an hour.

Q. 75 cents an hour?

A. Yes.

Q. And that was in 1935?

A. If I recall correctly. If you would like the exact dates and everything on this, I can get it for you in fifteen minutes.

Q. No, I am only asking the year, Mr. Keys, so as to make it easy. To the best of your recollection, was it still in 1935?

A. I would say I got a raise in 1935, yes.

Q. And you went to 75 cents an hour and your duties did not change?

A. That's right.

Q. You were still acting in a supervisory capacity and still giving directions to the men under you on behalf—

A. That's right.

162 Q. On behalf of management?

A. I don't know on whose behalf it was. I was told what to do and I done it.

Q. Do you not think it was on behalf of management?

A. I presume so; I never met any of the management of the Ford Motor Company until after I organized the foremen.

Q. Well, workers do not ordinarily meet management in the early stage of their employment, do they?

A. They don't ordinarily ever meet management.

Q. There is nothing unusual in that, is there?

A. No, there hasn't been.

Q. So you are not—

A. I am not complaining about that.

Q. You are not complaining because you did not get in to see Edsel Ford the first two or three months you were there, or Mr. Bennett, or those higher up?

A. No, I have no complaint.

Q. You would hardly expect that?

A. Well, if I wanted to go in to see them, I think I should be entitled to, but I didn't do it.

Q. You are not sure these directions you were giving were given on behalf of management or not?

A. I know my foreman would say we have to make so many pieces today, "So you better tingle the boys a little bit", and I went and done it.

163 Q. Would you say he was acting on behalf of management?

A. Somebody told him, I don't know who. I never inquired.

Q. But somebody higher up told him, is that right?

A. I presume so.

Q. Would you not say that person higher up was acting on behalf of management?

A. I wouldn't say.

Q. You would not make a guess at it?

A. Well, naturally, I suppose he was.

Q. And, then, you would say these directions were coming down to you from higher management?

A. That's right.

Q. And today the foremen are doing the same things, are they not, giving directions to workers from management with respect to operations of a department?

A. I haven't worked in a shop for some time, but I would still—

Q. (Interposing): That would be a fair statement, though, regarding the foremen today, would it not?

A. Yes.

Q. How long did you continue to get this 75 cents an hour? Were you ever raised again?

A. Yes, I was making $1.65 an hour when I left. When that came, I can't tell you now.

Q. Well, did that happen in 1936?

164 A. Yes, I got some raises in 1936, I got some in 1937, I got some in 1938 and I got some in 1940. I probably got some every year, at least once a year.

Q. Were you still in a supervisory capacity when you left Ford's?

A. Yes, I was classified as division shift foreman.

Q. How many men had you under you when you terminated your employment there?

A. About 100.

Q. Did you have any responsibility for the work or operation of those 100 workers?

A. Yes, I checked their time—no, I beg your pardon. I checked the time with my foreman and he checked the men and I told him how many pieces we had to do and if they had any trouble on the machine I would get a millwright or a maintenance man to come in. It was my duty to see that we produced so many pieces per so many persons, which I did, and which every good foreman should do.

Q. You assumed the responsibilities in that department on behalf of management?

A. To this extent, that the production quota was set by someone higher up—I don't know who. It was handed down to us.

Q. And you did your best to comply with that managerial instruction?

165 A. That's right.

Q. You were getting paid for that?

A. That's right.

Q. And that was quite a responsibility, was it not? As a matter of fact—

A. It certainly was.

Q. Did you like the work?

A. Well, I didn't particularly like it. I didn't—

Q. (Interposing): What was the occasion of the termination of your employment there?

A. Well, I was requested by the members of the Foreman's Association to go on full time, so I am on leave of absence from the Ford Motor Company now.

Q. (By Mr. Donovan): Since when, approximately?

A. I think that became effective July 1, 1942.

Q. And you were getting at that time $1.65 an hour?

A. $1.65 an hour and five cents for night work, thanks to the Union. When they came in they got five cents and the Company gave it to us foremen, too.

Q. That would be the CIO you are speaking of?

A. Right.

Q. Your period of employment at the Ford Company overlapped the entry into the Ford Motor Company of the CIO?

A. That is true, yes.

Q. By about how many months?

166 A. Well, they were organizing during the year 1936 and the first contract was arrived at in 1941, so I observed very carefully the contractual relationship between the Union and the Company from 1941 on up to the time I had my leave of absence, in effect.

Q. You felt rather good about the CIO action in getting a five-cent raise which went down to your benefit?

A. I felt better about the CIO getting a lot of things too numerous to mention right here.

Q. That gave you quite a few ideas, didn't it?

A. No, it didn't give me ideas. I have had ideas all my life.

Q. But you say you spoke very favorably a minute ago about a raise the CIO was instrumental in obtaining?

A. Sure, because I was unable to get it as an individual foreman.

Q. You benefited by the CIO action in that case?

A. I certainly did.

Q. Did that ever suggest to you that it might be possible for quite a bit of cooperation of the Foreman's Association with the CIO?

A. No, I had no such thoughts.

Q. As a matter of fact, you say that you have never had such cooperation? I mean now, the Foreman's Association of America?

167 A. Yes. You mean have we had?

Q. At any time from then on until today?

A. We have had their moral support, I know, other than that we have not had any cooperation.

Q. You have just had their moral support?

A. That is all I know of. Of course, it is a big organization and ours is a big organization and I do not see everything that goes on outside in the field.

Q. If you had more than their moral support you wouldn't know about it?

A. No, I wouldn't know about it.

Mr. Donovan: Before we get into another topic may we take a recess at this time?

Trial Examiner Jaffee: Very well, we will take a ten-minute recess.

(At this point a short recess was taken.)

Trial Examiner Jaffee: The hearing is in order.

Q. (By Mr. Donovan): Mr. Keys, I wish to ask you a few details about the foreman's duties and responsibilities. In the line of your testimony of your having acted as a foreman at the Ford plant, how long were you a foreman, approximately?

A. Six and a half years, I thought.

Q. As a foreman did your work include planning the work of your department according to the schedules

168 given you by management?

A. No.

Q. You didn't have to plan the work of your department?

A. No, I was told what the schedule was and was told if there was anything I needed to make that schedule, to let the general foreman know and he would take it up with the superintendent to see if he could get such equipment and material. I proceeded to produce what I could with what I had.

Q. But you had to plan the work of your department according to the schedule of work you were provided with, were you not?

A. If by "planning" you mean did I put certain people

on certain machines and move them from one machine to another, yes.

Q. Wasn't that an important starting point in your duties as a foreman, accepting the schedule plan that you received from your higher management and attempting to see that it was executed in your department?

A. I attempted, as I stated before, to the best of my ability, to do what they wanted me to do.

Q. It included that particular thing, among others, did it not?

A. Yes.

Q. There isn't any doubt about that, is there?

169 A. No, but there can be a difference of opinion as to what "planning" consists of.

Q. You accepted that responsibility?

A. I did.

Q. And you believe you discharged it to the best of your ability?

A. I do.

Q. Did you have these 100 men under you for a very long period of time?

A. For several months prior to the time I left the employment of the Company.

Q. Did you also assume the responsibility and attempt to discharge it for management—of getting your production out on schedule?

A. Yes.

Q. What did that involve? Any effort on your part?

A. Yes.

Q. What?

A. Well,—

Q. How did you discharge that responsibility?

A. Well, if I was given a schedule of some pieces to make in an eight hour shift I would sit down and determine for myself first, if I had enough equipment and enough manpower. If I did not I would request more. If

170 I did I would place the people in the various machines and various jobs as I thought they could best perform them and proceed to make the schedule if I possibly could.

Q. If, in your opinion, you did not have sufficient men to properly complete a schedule where given, you asked for more, did you not?

A. I did.

Q. You were supposed to do that for management, were you not?

A. That is true.

Q. Whenever that happened you did it?

A. Yes.

Q. And management, so far as they could, honored such requests from you as a foreman, did they not?

A. They didn't always honor it. Whether they did as far as they could, I have no way of knowing.

Q. Sometimes they did accept your request for additional personnel to discharge your duty?

A. Sometimes they did and sometimes they did not.

Q. They did sometimes, though?

A. Yes.

Q. And that made your department work better, didn't it?

A. Sometimes.

Q. Did you find the men of your department hard to handle?

A. No, I never had any trouble handling people.

Q. Did you ever have occasion to recommend the
171 demotion or discipline of any man over whom you were supervisor?

A. I do not recall ever having it.

Q. You never made one?

A. No. I have had occasions where the people have had minor grievances.

Q. You mean during the time the CIO was in the plant?

A. Yes.

Q. And did your work involve the handling of grievances that came from the rank and file CIO members?

A. To this extent, the departmental committeemen, as they call them in the Ford Motor Company, as a rule came to me first about any grievances of people under my supervision.

Q. By departmental committeemen you mean CIO departmental committeemen?

A. Yes.

Q. And they came to you and discussed grievances that arose in your department?

A. If it was a grievance that did not involve the determination of policy, in all probability I could handle it, otherwise I would refer it to the Labor Relations office and they would determine the disposition of the particular grievance.

Q. Would you say that you did handle a considerable number of grievances yourself?

A. No, fortunately the people that worked in my de-
172 partment did not have many grievances.

Q. Is that because you were such a good supervisor?

A. No, I wouldn't say because I was such a good supervisor, but I would say I tried to treat them human at all times.

Q. Were they pretty well behaved, a pretty well behaved lot of men on the whole?

A. On the whole, yes.

Q. And you had very little trouble with them in that respect?

A. Very little.

Q. But you did have some grievances, though?

A. Occasionally.

Q. Wherein you would get a complaint from the rank and file CIO members?

A. Yes, something like if they couldn't get a pair of gloves out of the crib or something of that nature they would come to me.

Q. And you would handle and dispose of that complaint, if possible?

A. Yes, I would go down to see if I could get the gloves. Frequently I couldn't get them either.

Q. Is that the most serious complaint you were in the habit of receiving from the CIO?

A. Grievances of that type, that was the most serious.

Q. That was the most serious?

173 A. Yes.

Q. In the matter of grievances while the CIO was in the plant and with regard to grievances that did arise,

did you regard—in attempting to settle those grievances—that you were acting for management?

A. I often wondered about that. The Company signed a contract with the CIO—

Q. I asked you whether you believed you were acting for management when you dealt with those grievances and handled them. Were you doing what you thought was the best thing for management?

174 A. I was doing what I thought was the best thing for everybody.

Q. Well, did not Management's policies enter into your decisions in the handling of grievances?

A. Well, I tried to explain that to you a minute ago when you interrupted me.

Q. Well, did they or did they not?

A. Management's policies never entered into the grievances I handled, because I had absolutely no share in formulating Management's policies.

Q. And you say Management's policies today do not enter into the handling of grievances for foremen?

A. Only to the extent that the Company has formulated policies and advised the foremen what they may or may not do.

Q. Would you say that foremen are or are not acting on behalf of Management in handling grievances?

A. They are acting as supervisors.

Q. You were at Ford's, too, were you?

A. I didn't understand that?

Q. You were acting in that capacity at Ford's, too, were you not? In whose employment were you, the Ford Motor Company?

A. Yes.

Q. Did you have any other employer?

A. Not that I know of.

175 Q. Were you taking directions from any others except your supervisors or superiors at the Ford Motor Company?

A. Oh, occasionally a superintendent would come in and kick a table over and say to clean up the department.

Q. Now, you are referring to a member of supervision, are you not, when you say superintendent?

A. Yes, he was a supervisor.

Q. Yes. Were you given, as a foreman at Ford's, in your work a schedule as to the time you had to meet?

A. You mean concerning production?

Q. Yes.

A. Well, our schedule was based on an eight hour shift. We were supposed to make so many pieces in eight hours.

Q. Where did you get that information, as to how many pieces you were to get out in eight hours with the men you had charge of?

A. Someone higher in Management would make up the schedules and give them to the superintendents. The superintendents would give them to the general foremen, the general foremen would give them to the shift foreman, and the shift foreman would tell me.

Q. Well, at any rate, you received this fixed assignment as to the scheduled number of pieces to get out in a working day from one or more of your immediate supervision?

176 A. That is true.

Q. And that was Management's schedule, was it not?

A. That's right.

Q. You, as foreman in that department, were expected to produce that schedule from the workers in your department?

A. That is true.

Q. That is a fair statement, is it not?

A. That is right.

Q. Did that involve the exercise of any ability, discretion or activity on your part at all?

A. Only to the extent I had to determine myself whether I had enough people and equipment to get that schedule out, and if not, I was expected to speak up and tell them I didn't.

Q. Your concern on that point was only as to the number of men you had in that department? Is that what you want us to believe?

A. Well, men and equipment.

Q. If you had 105 men and you still did not get your

scheduled number of pieces out, you would still have to do something about it, would you not?

A. Yes.

Q. Is it not true that the trouble a foreman may have in a department may arise through reasons other than the fact that there was a certain number of men there?

177 To put it in another way, is it not true that foremen's difficulties may arise because some man is not performing his work properly?

A. That is true.

Q. That has been your experience, has it not?

A. That is right.

Q. And when such things occurred, you attempted to correct those conditions, did you not?

A. I did.

Q. As a matter of fact, that is one of the foreman's underlying responsibilities, is it not?

A. Well, if he wants to hold his own job, he has to produce. It is his responsibility to that extent.

Q. You recognize that the foreman is the responsible head of a department, do you not?

A. No, not all foremen. It depends on how their classification is.

Q. Did you regard yourself as a responsible head of the department where you had these 100 men under you?

A. No, I only had a small division.

Q. Well, you did have men under you to whom you gave directions?

A. I did.

Q. And that included the things we have just discussed?

A. That is true.

Q. In adhering to the schedules you were provided with?

178 A. I tried to meet them.

Q. Well, that was part of your daily work, was it not?

A. Yes.

Q. And that involved giving directions wherever it was necessary?

A. Yes.

Q. And you did give such instructions where necessary?

A. That is right.

Q. The workers were supposed to follow those directions?

A. Yes.

Q. Because you were speaking on behalf of Management?

A. On behalf of my employer.

Q. We are both speaking of the Ford Motor Company, are we not?

A. I think so; I am.

Q. That is the only employer you had then, is it not?

A. That's right.

Q. Did you have, as foreman, any particular problem in connection with routing materials through your department?

A. On occasions.

Q. What was that problem?

A. We frequently, when we first started the piston job in the Aircraft Building, had difficulty in getting material into the department. As a matter of fact, for a while, the men stood around most of the day without anything
179 to do, except to wipe off the machines, and so forth, because we couldn't get stock.

Q. When you saw that condition, did you attempt to do anything about it?

A. Yes, I called the superintendent's office.

Q. Why?

A. Because he was the man who had the power and authority to get the stock in the Ford Motor Car Company.

Q. Was it not also because you were the foreman in that department, and were responsible for production if it could be gotten?

A. That's right.

Q. So you dd something about it in those instances?

A. I certainly did.

Q. You tried to keep your department running?

A. Yes, sir, I tried to make more than my schedule every day.

Q. Did you have anything to do with the placing of

workers in your department on their jobs from time to time?

A. I did, within their classifications.

Q. What does that mean?

A. Well, the contract between the UAW-CIO and the Company provides that people shall be classified—well, in certain classifications, and if a man was classified as a grinder operator, why, I would move him from one
180 grinder to another grinder in my department, but I couldn't put him on a lathe or milling machine, for example, because it would be in violation of the contract.

Q. So the problem of placing a man was one of your responsibilities also, was it not?

A. Within his classification, yes.

Q. While you were foreman, did you ever have occasion to suggest any improvements in the running of the department or in its operations?

A. Yes, many times.

Q. And were those suggestions the result of your experience as a foreman?

A. As a foreman and a worker.

Q. And that represented an attempt on your part, on behalf of Management, to improve operations of the department?

A. It represented an attempt on my part to improve the efficiency of the department.

Q. Did you have any responsibility with respect to the movement of material in your department either during the operations or after they were finished?

A. That was handled by conveyors. The operator would place the stock from his operation on a conveyor and it would go to the next operator. That operator would take it off, perform his operation and put it back on the conveyor.

Q. Did you have any accountability for the material
181 that was delivered from your department to elsewhere in the plant?

A. Everything we produced left the department immediately. If I didn't make my production schedule and the department receiving the stock we were producing was

caught up with its work, I would be holding up another department if I didn't make the schedule.

Q. Do you believe that your responsibility included the responsibility for the quality of the workers in your department?

A. What was that?

Q. I say, do you believe that your responsibility included responsibility for the quality of the work done by the workers in your department?

A. Yes, I maintained a very high quality at all times.

Q. And was the fact that, if possible, you were to see that the work was made according to standard specifications a part of your responsibility also?

A. We were producing parts for the Pratt and Whitney engine and the United States Army Air Corps had its own inspectors to inspect them and we had to make them to their specifications or they wouldn't accept them.

Q. They required a good deal of supervision, that work, rather, did it not?

A. Yes, I was on the job every minute of the eight
182 hours I was there.

Q. Did you have pretty fair success in maintaining the specifications required by the Army in your department?

A. Yes, we were very successful.

Q. And you felt that the efforts you put forth in that connection contributed to that result?

A. I do.

Q. Insofar as that is true, you followed the production processes through your efforts?

A. I would say so, yes.

Q. Did you have any contact with the inspection department in the discharge of your duties as a foreman?

A. Yes.

Q. What contacts did you have and what were they about?

A. The inspection department would reject our finished products and I would ask the foreman of the inspection department why and in most instances he would say the superintendent had gotten a complaint and had told him

not to accept any more stock unless it was to so-and-so specifications. He had his orders from the superintendent. I would go to the building superintendent and the two superintendents would get together and argue it out and sometimes they would say to let it go through and sometimes they would say to throw it out and make some more.

183 Q. In discharging your responsibilities in respect to these items we have so far discussed, were you aware, as a foreman, that the manner in which you discharged your responsibilities and looked after these things might directly affect the cost of the Company's production?

A. Definitely.

Q. Almost any one of those operations, if badly supervised, would increase the Company's cost?

A. That is true.

Q. And, in turn, affect the selling price?

A. That is true.

Q. Was it any part of your duties to see that the tools and fixtures were maintained in proper condition and in sufficient quality and number?

A. Yes, I had to see that the machines, tools and so forth in my department were kept in good working condition or else I couldn't produce my schedule. Of course, I didn't do that work. I simply requested that it be done. Sometimes it was and sometimes it wasn't.

Q. It was part of your effort, though, to see that the tools and fixtures were maintained properly in your department?

A. That's right.

Q. It wouldn't have run well had it not been kept properly, would it?

184 A. That is right. I have let machines stand idle all night because I couldn't get someone down to fix it.

Q. Did you have any responsibility with respect to the general condition of your department, with respect to such a matter as cleanliness?

A. Yes, I tried to keep it clean.

Q. Did you have to exert any effort in that direction?

A. Well, if the sweepers, who were under the jurisdic-

tion of the sweeper foreman and sweeper superintendent, were not doing their job, I called them and told them about it.

Q. You complained about it?

A. Yes, and sometimes they cleaned it and sometimes they didn't.

Q. Because it is better to have a department where you have one hundred men under you in a clean condition than otherwise?

A. That's right; it is safer and more pleasant to work in.

Q. The working conditions are better?

A. That is right.

Q. And it is healthier?

A. That is right.

Q. And so, therefore, it was better to keep it clean?

A. Yes, except when you asked the men to clean it; then they wouldn't do it.

Q. Regardless of who does it, the workers are better off if the place is kept clean?

185 A. That is my opinion.

Q. You did your best on that, at any rate?

A. Yes.

Q. Was the problem of scrap a problem at all for you at Ford's?

A. Yes, very much so, in the early stages of our producing the Pratt-Whitney pistons.

Q. Did you address your ability to attempting to minimize the needless scrap in your department?

A. I did everything I possibly could under the authority I had to minimize the scrap.

Q. You think that is something a foreman should do, do you not?

A. Absolutely, I do.

Q. You did your best on that?

A. I did.

Q. Did you ever have the problem of surplus employees in your department?

A. I have.

Q. What do you understand me to mean by "surplus employees"?

A. More employees than I had machines to operate and equipment for them to work on.

Q. When such a situation arose, what did you do?

A. I told the general foreman and he told the superintendent and the superintendent would tell them
186 what to do with them. He couldn't move them and I couldn't move them.

Q. You would then attempt to eliminate surplus employees, wouldn't you?

A. I simply told them I had too many employees and they could do anything they wanted with them.

Q. Were you willing to let them stay there as unnecessary employees without an effort on your part to remedy the situation?

A. No, not if I had no use for them.

Q. You didn't want them in there?

A. No.

Q. You knew that Management did not want men standing around without work for them to do, didn't you?

A. I reported it to them on many occasions and they did not do anything about it.

Q. But you did make a personal effort to see that the condition of surplus employees in your department did not continue?

A. I reported it.

Q. And you recognize that that is a circumstance that would likewise affect the cost of the Company's product, would it not?

A. It would unless the other employees were maintaining the schedule without them and the Company was satisfied to let it go with that.

187 Q. Unless, you say, other companies were equally lax and maintained a larger force of workers than necessary in the department?

A. I didn't say that, I said unless the Company was willing to let them stay in there based on the theory that the balance of the employees were making the production schedule and they were only interested in getting so many pieces from so many people.

Q. You regarded it as part of your duty as a foreman

to attempt to remedy the condition of surplus employees in your department, did you not?

A. Yes, to report it.

Q. You did something about it, didn't you?

A. I reported it.

Q. And you hoped the condition would be eliminated?

A. That is right.

Q. Toward the end of your foremanship at Ford's, had you become what you considered a skilled mechanic?

A. No.

Q. You never became a skilled mechanic?

A. No, I did not consider myself a skilled mechanic.

Q. Did you have a factual knowledge of the machines and the type of machines used by the workers in your department?

A. Yes, I could operate them all.

Q. You understood and could operate them?

188 A. That is right.

Q. Did you have any responsibility for seeing that the right type of machines were used in your department?

A. No. They sent me machines that I certainly wouldn't have purchased if I had anything to say about it.

Q. Did you say anything about them?

A. I reported that in my opinion the machines were no good. I was told to mind my own business and that my opinion did not amount to a "hill of beans."

Q. But you did try to remedy a condition which to you appeared to be an unsuitable type of machinery?

A. I certainly did.

Q. That is because in your judgment you felt it was your duty—

A. (Interposing) I tried to maintain the schedule and tried to do everything I could to maintain the schedule for my own self-protection.

Q. You mean you felt that Management might fire you?

A. They told me so on many occasions. They had the foremen so scared to death they were afraid to look cross-eyed.

Q. Including yourself?

A. Including myself.

Q. And you feel that you were not able to do very much about remedying a wrong type of machine in your department?

A. No, it didn't prove very successful. I reported it.

189 I told them that I did not think that the machine, this machine or that machine was any good and that this or that tool was of the proper quality and construction and I was told that the engineering department and the superintendent and the higher management were running the Ford Motor Company and not Bob Keys or anybody in that department.

Q. Would you say that that same condition would be common in any other large common mass industry in Detroit that you know of?

A. I can only speak from hearsay but I have been told it is so, yes.

Q. Do you know of the companies involved here before the War Labor Board Panel that recently convened?

A. I know who the companies were.

Q. Would you say that the condition you have described with reference to the selection of the wrong type of machine and the foreman's attempt to recommend remedying that condition to those companies is a condition in those companies, including Chrysler, Briggs, Hudson, Murray and the other companies involved in that case?

A. I would say that the foremen in those cases and in those companies who are trying to perform their duties properly do report those conditions. What action the Company takes I do not know.

Q. Did you ever hear of any foreman being treated

190 by any of those companies as you say you were in this one matter as to the type of machinery that was used?

A. Yes, several thousand of them.

Q. Why didn't you bring out such testimony before the Panel? You do not claim that any such testimony was adduced there, do you?

A. Offhand, I do not recall why we did not, which is, of course, your business.

Q. Don't you recall that the relations between the foremen and Management were dwelt on in great length and detail in that case?

A. That is true and it was very apparent that since the organization of the Foreman's Association, conditions have improved one thousandfold.

Mr. Donovan: I ask that that last statement be stricken out as not responsive.

Trial Examiner Jaffee: Will you please read the answer?

(Answer read.)

Trial Examiner Jaffee: So much of the answer that continues after the word "true" is stricken. The answer is simply, "That is true."

Q. (By Mr. Donovan) You do not agree then that the foremen in the Company we have just been discussing that have been before the War Labor Board Panel as the evidence shows were treated with courtesy
191 and consideration by Management?

Mr. Nelson: If he is going to ask questions involving interpretation of that testimony, I think then this order asking it be stricken is altogether out of place. Mr. Donovan's next question involves an interpretation of that testimony. Of course, I am not sure this is proper on this inquiry, comparison between testimony at another hearing before another Board. I doubt that it is proper in this case. You are going to get into a big proposition if you do.

Trial Examiner Jaffee: Will you please read the question?

(Question read.)

Trial Examiner Jaffee: I think the form of the question is objectionable in any event.

Mr. Donovan: I will withdraw the question.

Q. (By Mr. Donovan) Would you say, Mr. Keys, you were in attendance every day at that hearing before the War Labor Board Panel, were you not?

A. Yes.

Q. As a matter of fact, you conducted the case for the Foreman's Association of America, didn't you?

A. That is true, with the exception of the opening day and the last day.

192 Q. That accepted ninety-eight percent of the trial, didn't it?

A. It did.

Q. And you examined the witnesses for the Foreman's Association of America on that occasion, didn't you?

A. I did.

Q. And you want to tell the Trial Examiner here that there were conditions in any of those companies involved comparable to the Ford Motor Company department with respect to the type of machinery and that question we were discussing?

A. Well, I do not believe I can say that they were identically comparable. I do know that there were many grievances before the Panel.

Q. I am talking about the right type of machinery which you say you had considerable trouble with at the Ford Motor Company, that you had considerable difficulty with certain supervision on that point. You do not claim that that condition existed in any of the other companies before the War Labor Board Panel.

A. I do not claim that it was presented as a grievance to the Panel.

Q. Including the Packard?

A. Including the Packard.

193 Mr. Nelson: Your question, Mr. Donovan, related to the condition and not to the testimony. I am interested in the condition and I am not interested in what the testimony was, Mr. Examiner. The difference between the witness and counsel is that counsel asked for a condition — I have no objection to that. If he asks for a characterization of the testimony before the Panel, I conceive it to be irrelevant.

Trial Examiner Jaffee: The answer to that is that they are not mutually exclusive. The testimony might bear on the condition itself.

Mr. Nelson: He asked a question which the witness answered as to the testimony, while his question was as to the condition. I am interested in the condition.

Trial Examiner Jaffee: The next question, please.

Q. (By Mr. Donovan) Now, Mr. Keys, as a foreman at the Ford, do you have any records to keep of any kind?

A. Only the time sheet of my three foremen.

Q. Now, tell us every record that you kept as a foreman. Just what it was, what the purpose of it was and what you had to do with it?

A. I just told you, Mr. Donovan.

Q. All you kept as a foreman there was a time sheet?

A. That is right.

Q. There again, that would differentiate the condition of the Ford foremen from the other companies in Detroit that were before the War Labor Board Panel,
194 would it not, including Packard?

A. I don't know.

Q. And Briggs—you say you do not know?

A. I do not know.

Q. Well weren't you present when form after form that the foremen were required to fill out in each one of those plants were introduced in evidence and didn't you ask questions about them yourself on cross examination?

A. I was present when report forms were introduced, yes. I am aware of the fact that they make out reports. You asked me about keeping records. There is a difference between a record and a report.

Q. Perhaps I am only asking about one thing at a time.

A. If it is "records," no, I notice no difference in the records of the Ford Motor Company.

Q. I asked you about reports, didn't I?

A. No, you asked about records.

Q. All right, let's take the matter of reports. Did you, as a foreman, make out any reports at the Ford Motor Company, or can't you remember?

A. I made out hospital cards for employees injured to go to the hospital, that is all.

Q. And that is the only type of report that you made as a foreman at Ford's?

195 A. Other than my departmental communications which I would write to the foreman who followed me in my same capacity on the following shift, explaining that so-and-so machine was down and that so many tools were in the grinding room and so forth, that is all

Q. Then, those two things were the only reports that you made as a foreman at the Ford Motor Company, is that right?

A. To the best of my recollection, yes.

Q. And there is no similarity there again between Ford and Packard and Briggs and Chrysler and Murray and the Aeronautical Products, is there?

A. Without reviewing the record, I cannot recall exactly. I do remember there were numerous report forms introduced by the Company that were claimed to be used by the foremen.

Q. Then that is all the reports? Let's talk about the records for a moment. What records did you, as a foreman, have to do with and make or deal with as a Ford foreman?

A. Well, the only thing I filled out that would become a part of a record at all would be the time sheet. That was preserved by the time department, I presume — at least, for a number of years — or something like that. That is, it would be in my judgment on that. I think it would be good business to do it. Whether they do it or not I do not know.

Q. Did you have such a thing as a trouble report
196 at Ford's?

A. No.

Q. Did you have such a thing as shortage reports?

A. No.

Q. Did you have such a thing as labor requisition reports?

A. No.

Q. Did you have such a thing as progress reports?

A. No.

Q. Did you have such a thing as employee rating card reports?

A. No.

Q. None of those things are things you had to deal with as a Ford foreman?

A. No.

Q. Did you have any responsibility with reference to instructing any of the workers over whom you were supervisor?

A. Surely, I inspected them to the best of my ability.

Q. You did that whenever it was necessary?

A. Whenever they would send a new employee in to the department that never operated a machine in a factory, which was common during this war period, I would attempt to instruct him.

Q. When a new man would come in to the department, did you attempt to make him feel at home and in friendly surroundings with his fellow workers?

197 A. Yes, I shook hands with him and told him I was glad to have him in the department and that we would get along nicely.

Q. And that sort of thing makes a man feel kindly towards Management and is the part of the duty of a foreman—his duty towards Management?

A. Well, you see, I was not received that way.

Mr. Donovan: I ask that that be stricken. We are not considering bitterness or other events just now.

Trial Examiner Jaffee: It may stay.

Q. (By Mr. Donovan) Did you give the new employees as much information as you could about their duties and surroundings when they came in there?

A. I did. I taught them everything I knew.

Q. And that was quite a bit, wasn't it?

A. That is a matter of opinion.

Q. Well, in fairness to yourself, it was quite a bit?

A. I managed to teach them enough to perform their duties satisfactorily.

Q. And you feel that you discharged your responsibilities for Management rather well insofar as you could?

A. I would say it is a matter of record that I did.

Q. And that is even a matter of record?

A. I think the Company's production records would show that I always maintained my end of the job.

198 Q. Did you ever have occasion to discuss with any of the workers in your department under you, the question of whether they should be speedy or whether on the other hand they should be accurate first?

A. Yes, I told them how many we had to make and of what quality they had to be.

Q. And did you have any occasion to emphasize either speed or accuracy?

A. I did.

Q. Frequently, didn't you?

A. Very frequently.

Q. When you had to give men instructions, and I refer now to workers in your department, you sometimes had to follow them up to see if they were carried out, of course, did you not?

A. Yes.

Q. And some men need more than one instruction on a particular matter?

A. That is true.

Q. That is the way workers are, isn't it?

A. That is true.

Q. Did you feel that you had any uniform method of treating the workers under you so far as disciplinary action by you was concerned so that they felt that you were fair and impartial?

199 A. Well, I felt there was only one uniform method and that was the humane method. If you are talking about the provisions of the contract, I learned some months after the contract was signed what the grievance procedure was.

Q. So far as you were personally concerned, did you try to be fair and impartial with the workers and give them the feeling that their foreman was honest and impartial?

A. I did.

Q. And that is a rather good thing for men to do, that is, for foremen to do, isn't it?

A. I think all foremen should do it.

Q. It makes for the running of a better department?

A. It certainly does.

Q. And that in turn is related to good production, is it not, and frequent turnover too; isn't it those things that bear on turnover in a factory?

A. I would say those things have a bearing on everything in the factory.

Q. Including turnover?

A. Yes.

Q. Those are very important things?

A. Definitely.

Q. And the foreman's part in that looms rather large, doesn't it? He can sound the note as far as the
200 feeling of the men in the department, as foreman.

A. He can if he has the authority to do it. If he is told what to do and has to carry out the orders, he is in a bad position.

Q. Regardless of any limitations he may feel that are on him which he does not like, if any, he can still do his best to make the men feel he is impartial and fair as a foreman representing Management, isn't that true?

A. Yes, he can explain, "I have been ordered to tell you to do so and so and I am doing it."

Q. Well, you have testified that insofar as your own conduct was concerned, you feel you were fair and impartial and humane in the treatment of the men in your department.

A. That is right.

Q. And they responded and accepted that atmosphere

A. That is right.

Q. Did you ever have occasion to commend any of the workers in your department for a special job well done on any particular occasion?

A. Well, if you mean by that, verbal commendation, yes, I have.

Q. And that is the sort of encouragement that is a good thing for a foreman to extend where it is merited?

A. Well, that is all I could give them. I couldn't give them a raise or anything else.

201 Mr. Donovan: I ask that that be stricken.

Trial Examiner Jaffee: It may stand, I think.

Q. (By Mr. Donovan) Did you ever have a desire to recommend to Management, that is, to higher Management, the promotion or a raise on behalf of any of your workers?

A. Yes.

Q. A foreman should be able to do that sort of thing, shouldn't he?

A. That is right. The workers would come to me as foreman and say, "Keys, how about a raise"? And I would say, "Well, I think you deserve it, and I will recommend it".

Q. And you do so in those cases, didn't you?

A. I made it clear that they were not to hold me responsible if they didn't get it, and that is why I got along with them.

Q. When they came to you, you talked to them in a co-operative way and you told them that you would try, and if the man merited it you would attempt to get it for him?

A. That is right. I told him if I thought he was entitled to it I would recommend him for a raise.

Q. And you would make the recommendation if he was?

A. If I thought so, I would.

Q. When you made that decision, were you regarding him as a man who would be more valuable to Man-
202 agement if he were given that raise than if he were denied it?

A. I never thought who he was more valuable to. But he was valuable to me if I wanted to maintain my position.

Q. If a satisfied, good worker was given a raise he would be a better man for the foreman and the Company generally, isn't that good common sense?

A. He should be.

Q. That is true, now, isn't it?

A. Not in all cases.

Q. Then you think that a dissatisfied worker is better not only for the foreman but for the Company?

A. No, I did not say that I thought he was better.

Q. Did you ever encourage any of your workers to themselves make suggestions with reference to the operation of their department or anything having to do with that, to you?

A. Yes.

Q. Did you ever receive any such suggestions?

A. Yes.

Q. From time to time the men would make them?

A. That is right.

Q. Were any of those suggestions good suggestions?

A. I thought that many of them were very good suggestions.

Q. Do workers, speaking generally now, come to foremen and make suggestions, volunteer suggestions that may involve a change in the operation of a department unless they feel more or less on a personal and friendly basis with the foreman?

203

A. I can only speak from my own experience. They did with me.

Q. It helps if the foreman has the type of leadership which encourages that type of thing?

A. That is the way I felt about it.

Q. That would be true of any foreman?

A. It would be, because it is to his own advantage.

Q. Did you have any responsibility at all with reference to men or, rather, workers leaving their jobs for a different period during the day?

A. Yes, we had a great deal of trouble with that.

Q. Taking into consideration—first, that required quite a bit of activity on your part, did it not, looking after it, did it not?

A. Well, usually—until the time I had left the employment of the Company, it had not been corrected. The men would leave their jobs early and line up at the clocks. If that is what you have reference to.

Q. I mean, for any reason; I do not mean at quitting time necessarily. I mean, during the day.

A. We never prohibited them from leaving the job if they wanted to go to the lavatory. Occasionally, one would go and stay too long and, as a rule, his leader—

204

and by leader, I mean the man in charge of a particular little group of machines—the leader would go after him and get him back on the job.

Q. Well, you as foreman, kept your eyes on things of that sort, did you not?

A. Yes, everybody in the Ford Motor Company kept their eyes on it.

Q. And as foreman of the department, you felt obligated to know what conditions were as to the men leaving for an undue length of time?

A. As foreman of the department, I knew I couldn't make my schedule if they weren't on the job.

Q. That is right, and you did what you could to improve that condition, did you not?

A. Yes, I worried.

Q. Were any of the workers whom you recommended for promotion promoted?

A. Yes, I think I can recall one that was promoted from an operator to a leader's job on my recommendation.

Q. That is the only one you can think of at the present time?

A. That's all I can recall.

Q. In your six years as foreman?

A. That's right.

Q. That is the only recommendation you made for promotion?

205 A. No, it isn't the only recommendation I made.

Q. You made a lot of recommendations?

A. I made several.

Q. Well, just roughly, how many?

A. Oh, I would say a dozen.

Q. That would be about two a year, if you were there six years, about that?

A. Yes.

Q. And some of those cases you recommended, your recommendations were not followed by Management?

A. Most of them were not followed.

Q. And again, that does not correspond with the general condition, and I am speaking generally, in other plants, such as the Chrysler Corporation, Briggs and the Murray Corporation?

A. I don't know.

Q. You know nothing about that?

A. I don't say I know nothing about it.

Q. You do not know whether foremen in those plants originate any recommendations for promotions or demotions?

A. Oh, yes.

Q. You know nothing about it in a general way, now, as to the extent to which those recommendations are honored or supported by Management?

A. I can tell you what I have been told.

206 Q. Did you not hear, day after day, testimony on the many ways in which foremen have been supported by Management in such matters during the War Labor Board hearing?

A. Yes, I heard that.

Q. And you heard them read in a lot of discharges the foremen had made, that had been supported by Managements?

A. Yes, and I heard them read in discharges made in the Labor Relations Department upon the foremen's recommendations.

Q. What is your relation with the men who have to do with the delivery into your department—at Ford's, of course, I am speaking of—of the materials the men work on?

A. There are no relations, except to get the stock in here. "That's your job, get it in here", I would tell them that. If they had it, they would bring it in; if they didn't, they wouldn't do anything about it.

Q. But you can ascertain whether or not the stock is sufficient in quantity, of course, for the men to run the department?

A. Well, I can count. If we had to make one hundred finished pieces, why, I would have to have one hundred rough pieces.

Q. That is right, and part of your responsibility was to see that you had enough material in there to keep the department running smoothly?

207 A. Not to see that I had enough material to keep the department running smoothly, only to the extent of reporting it and after that, it was taken out of my hands. I reported it on each occasion, because if I was going to make my production, and I didn't want to be fired by the superintendent at night, I had to report it in each instance.

Q. That is right; and whenever that condition prevailed you complained louder?

A. I sure hollered.

Q. Now, as I recall your testimony, you had very little to do while the CIO was in the Ford factory and while you were a foreman. You said that was for a period of about six or eight months, as I remember. Am I right about that?

A. No.

Q. How long was the CIO in there before you left?

A. I have been told it was in there since 1936. The first contract was signed in 1941, if I am not mistaken, 1940 or 1941; 1941, I believe.

Q. You left Ford's when?

A. In July, 1942, about a year or year and a half later.

Q. Well, did you not have certain contacts on grievances with CIO personnel during that period?

A. Well, for a long time I didn't. The Company and the Union negotiated a contract and signed it, then for the first time the foremen knew about it by reading about it in the newspapers. They were not given copies of the contract. There were some disturbances in the plant and so forth, and finally resolved itself around to where we understood that people would come to us with their grievances, if they had any.

Q. Who told you that?

A. I can't recall anybody telling me. I had a copy of the contract.

Q. Well, you did get a copy of the contract?

A. Yes, I stopped down and got a copy from Local 600 of the UAW-CIO.

Q. Did you know the officers of that Local?

A. No, not at that time. I simply stopped down there and asked them one day for a copy.

Q. And after that, you did have certain contacts with the workers under the so-called grievance machinery of the contract?

A. Yes, I found out the first step of the grievance machinery was the foreman.

Q. Just take any ordinary grievance, who were the parties concerned in a grievance? First, there would be the worker, would there not?

A. The worker would be the aggrieved man.

Q. That is right, and who else?

A. His departmental committeeman.

209 Q. That would be the CIO man?

A. Yes, he would go to the CIO man and then he would come to me.

Q. Did the worker speak for himself or did the CIO committeeman speak for him?

A. He was represented by the committeeman.

Q. Who spoke for Management at that stage?

A. I don't know; I didn't.

Q. Did anybody?

A. If I was speaking for Management, I could have settled a lot of grievances.

Q. Did anyone speak for Management at that stage?

A. Not at that stage.

Q. Well, did you have anything to do with the CIO regarding workers' grievances?

A. I said I did. Mostly, they were just little minor things like being unable to get gloves or oil running out of a machine.

Q. Who represented Management on those occasions when you settled those grievances?

A. On those, I did.

Q. You did?

A. Yes, I sure did.

Q. And you settled them?

A. Sure, I got the mopper over there and he mopped

210 up the oil, and I went down and got the gloves.

Q. Now, Mr. Keys, you filed the petition in this case on October 10th, at least, you signed and swore to it on October 19th, I guess it is, last, is that right?

A. Yes, I am sure that is the date.

Q. Now, with whom did you take up the question of the issuance of this petition?

A. I didn't take it up with anybody, other than our legal counsel and our Executive Board.

Q. You did not take it up with the Seventh Regional Office of the National Labor Relations Board?

A. I went over there and asked if I could have some blank forms, and they gave them to me, and I went back and filled them out and took them back and filed them.

Q. When did you make the request for the form that you filed or filled out and signed and swore to on October 19th?

A. On October 19th.

Q. What led you to ask for a petition with respect to the Packard Motor Car Company at that time?

A. What led me to ask for a petition?

Q. That is right. You know that the National Labor Relations Board had held that the foremen were an inappropriate unit for bargaining purposes?

A. I was familiar with the Maryland Drydock decision.

Q. Yes, everybody understands that.

211 A. No, I don't think anybody understands that.

Q. Well, you understood the decision in that case?

A. That is right.

Q. Why did you think the National Labor Relations Board would uphold a petition against the Packard Motor Car Company in 1944, in view of that decision?

A. I didn't know they would; I had hopes.

Q. On what did you base those hopes?

A. The fact of the chaotic condition under which these foremen have been working during this war period, and the results that might follow.

Q. That condition was no different than the condition that prevailed some months before?

A. Prior to the Maryland Drydock decision, conditions were lovely in comparison to what they are now. There isn't an employer that hasn't taken advantage of them and abused them all. They have all done that.

Q. You think the Board was wrong in deciding the Maryland Drydock case as they did?

A. I do.

Q. What, specifically, do you have in mind now, what specific hope do you have now that the Board will uphold your petition regarding the Packard Motor Car Company for the bargaining rights of foremen?

A. The same hopes I have had in the three years of

212 fighting.

Q. You just decided to file one more petition, is that right?

A. That's right.

Q. And you did not negotiate with anybody connected with the National Labor Relations Board in Washington or in Detroit on that subject?

A. No, I did not.

Q. And you did not have anyone present for you as your counsel or agent in Washington or Detroit, or elsewhere, prior to this Notice of Hearing by the Board?

A. Now, following the Maryland Drydock decision, I have been to Washington several times myself.

Q. I mean, in reference to this petition, this petition you signed and swore to on October 19th, regarding the Packard Motor Car Company?

A. In reference to this petition, no.

Q. You just decided to file just one more petition, hoping the Board would change its mind and entertain it?

A. At the time of filing that, yes.

Q. That was on October 19th?

A. That is right. As a matter of fact, in discussing this situation with another officer of the MESA not more than a week before I filed that, he said he held absolutely no hopes, but I still filed it anyway.

213 Q. And you did not discuss the petition after you filed it with anybody connected with the National Labor Relations Board?

A. At the time—

Trial Examiner Jaffee: (Interposing) Did you say after he filed it or before?

Mr. Donovan: Either, before or after. I believe he said he did not before.

Q. (By Mr. Donovan) Did you talk to anybody in the Seventh Regional Office or in Washington about this petition at the time you swore to it, or afterwards?

A. At the time I filed the petition on that day, October 19, when I took it over to file it, yes.

Q. You went over to the Seventh Regional Office of the National Labor Relations Board?

A. I did, and just so the record is true and straight, prior to filing this, I had called the Seventh Regional Office of the National Labor Relations Board over the telephone and told them I was going to file a petition one of these days.

Q. What did they tell you when you took the petition over there?

A. They said they would refer it to Washington and Washington could do what they wanted to with it.

Q. And that represents all the conversations you
214 have had with anybody connected with the National Labor Relations Board about this petition?

A. No, I explained how I happened to select those particular classifications as the unit, and why I did it.

Q. No reason was given to you as to why the petition was being entertained?

A. No.

Q. And you do not know now?

A. No.

Q. You just have a hope that the National Labor Relations Board is going to reverse its decision?

A. Yes, I have that hope. I think they should reverse their decision.

Q. That is what I understand.

Trial Examiner Jaffee: We will suspend at this time until two o'clock.

(Thereupon, the hearing in the above matter was recessed at 12:15 P. M. until 2:00 o'clock P. M.)

215 After Recess.

(Pursuant to recess the hearing resumed at 2 o'clock P. M.)

Trial Examiner Jaffee: The hearing is in order, gentlemen.

ROBERT H. KEYS

resumed the stand, was examined and testified further as follows:

Cross-Examination (Continued).

Q. (By Mr. Donovan) Mr. Keys, referring to your exhibit in this case, number 9, which you will recall,—to refresh your recollection—that was a list of the petitions for bargaining that the Foreman's Association of Amer-

ica had filed with the National Labor Relations Board. Do you recall that petition?

A. Yes.

Q. And it also contained an indication in each case for the many petitions that were filed, an indication of the disposition. Do you recall that?

A. Yes, I believe it is marked on the exhibit.

Q. Now, I take it for all companies in Detroit and Michigan that these several petitions were, of course, filed with the Seventh Regional Office here in Detroit?

A. That is right.

Q. That is right, isn't it?

A. Anything for the Lower Peninsula for the State
216 of Michigan was filed in the Seventh Region.

Q. In that case would the Midland Steel not be in such a petition?

A. Midland Steel would be in such a petition.

Q. Is that a petition you filed with the Detroit Board?

A. Yes.

Q. In that case the Board declined to issue a notice of hearing, did they not?

A. You have reference to the representation case?

Q. Well, I am referring to your own exhibit No. 9 which is headed "Petitions for Bargaining."

A. Yes.

Q. Which were filed with the National Labor Relations Board Office as you state here in Detroit for all Michigan companies for the Lower Peninsula. I am asking you now if the one you filed on behalf of the Midland Steel Company for the Foreman's Association of America, whether in that case the Board declined to issue a notice of hearing?

A. All the petitions pending at the time of the Maryland Drydock case—

Q. Let's confine our answer to the question asked.

A. That was excluded. That was declined in a group of petitions.

Q. The Detroit Regional Board declined to issue a
217 notice of hearing?

A. On June 29th, along with others.

Q. They declined to issue a notice of hearing for similar petitions of the Foreman's Association of America. By the way—you executed all these petitions, did you not?

A. I do not know whether I personally executed each and every one of them or not. I probably did.

Q. And the Board declined to issue any notice of hearing in the Detroit Steel Products case on petition of the Foreman's Association of America?

A. Yes.

Q. And in the case of the Graham Paige Company?

A. Yes.

Q. And in the case of the Chicago Pneumatic Tool Company?

A. Yes.

Q. And in the case of the Aluminum Company of America?

A. Yes.

Q. And in the case of the Timken-Detroit Axle Company?

A. Yes.

Q. And in the case of the Studebaker Corporation?

A. I am not personally familiar with that one.

Q. Well, we will omit that. Then in all these cases that you have just mentioned did the Board decline to issue any notice of hearing on your petition for bargaining on behalf of the Foreman's Association of America?

218 A. Yes, on June 29, 1943.

Q. Why, in October of this year, in filing a petition for bargaining again did you select the Packard Motor Car Company?

A. Why did we select the Packard Motor Car Company?

Q. Yes.

A. Because we were 100 per cent organized in Packard.

Q. And that is the only reason you had for selecting the Packard Motor Car Company?

A. That is the only reason I had, yes.

Q. You mean by that other people had other reasons that you know of?

A. When we decided to file another petition on one of our chapters we checked all of our chapters and tried to

determine which would be the strongest and which had the majority, and the majority opinion was that Packard was the best.

Q. You know that the Board ordinarily and customarily and traditionally entertains a petition for bargaining on behalf of representatives, even in a small percentage, as low as ten or fifteen per cent of the employees in the requested unit block?

A. No, I am not personally familiar with that fact.

Q. Well, you had filed petitions where in many cases prior to this one, where you were not 100 per cent
219 organized as you say you are in Packard?

A. Yes, we were more than fifty-one per cent organized, though.

Q. So that the mere fact you had 100 per cent membership would not be the reason why your petition would not be entertained. You could have made it in behalf of any other company where you had fifty or fifty-one per cent, couldn't you?

A. We could have.

Q. Now, Mr. Keys, in the Petitioner's Exhibit No. 4, which is the Constitution of the Foreman's Association of America adopted at Dearborn, Michigan, November 24th—was that, by the way, the first Constitution of the Foreman's Association?

A. November 2, 1941, yes.

Q. And at that time, Article I reads as follows, did it not:

"This voluntary association of foremen shall be known as Foreman's Association of America"?

A. That is correct.

Q. And article II, which was headed "Purposes," reads as follows:

"The purposes of this Association shall be to encourage acquaintance and social intercourse among foremen, to confer and act upon measures for the
220 protection and advancement of the economic welfare of foremen, and to encourage study, conference

and wider learning among foremen, to the end that they may improve in the management of men in industry."

Q. You recall that as the original Article II of your constitution, do you not?

A. That is correct.

Q. Article V, subsection 2, in that Constitution, reads as follows, does it not:

"Any person of good moral character, who is at the time of filing his application and at the time of admission to membership a foreman for any owner or employer of labor, such person not being the owner or employer of labor, may become a member of this Association provided he has been a foreman for a period of not less than sixty days prior to filing his application for membership. * * *"

A. That is correct.

Q. Now, that Constitution was charged, was it not?

A. It was amended in 1942.

Q. It was amended in 1942?

A. I believe it was.

Mr. Donovan: Will you mark this Company's Exhibit No. 1, please?

(The document above referred to was marked for identification as Company's Exhibit No. 1.)

221 Q. (By Mr. Donovan): I show you what has been marked for identification as Company's Exhibit No. 1, and which appears to be a Constitution of the Foreman's Association of America, bearing the words, "Adopted at Dearborn, Michigan, 1942," and ask you if you can identify that pamphlet, as such?

A. Yes, I identify that as the Constitution of the Foreman's Association of America that was adopted at Dearborn, Michigan in December, 1942.

Q. And do you agree that the provisions of the earlier Constitution that I just read to you and which you said were correct, were still continued in this particular Constitution, or would you like to examine it?

A. Do you have reference to an amended constitution when you say "this particular"?

Q. I have reference to this Company Exhibit No. 1 which you have now identified as the Constitution adopted in Dearborn, Michigan, November, 1942. The earlier exhibit, No. 4, was the November 2, 1941, Constitution.

A. I am not familiar with the amendment at this time. I would read it and tell you whether there were any changes or not.

Q. I will ask you, and I will give you a chance to examine it, if I am not quoting it correctly from Article I, as I did earlier,—

222 "This voluntary Association of Foremen shall be known as Foreman's Association of America."

Q. Then Article No. 2:

"The purposes of this Association shall be to encourage, acquaintance and social intercourse among foremen, to confer and act upon measures for the protection and advancement of the economic welfare of foremen, and to encourage study, conference and wider learning among foremen, to the end that they may improve in the management of men and women in industry."

And Article V, a corresponding article to Article V which I previously read:

"Any person of good moral character, who is a foreman for an employer of labor at the time of filing an application for membership may become a member of this Association, provided he has been a foreman for a period of not less than thirty days prior to filing his application for membership."

You do not dispute that still continued to be the provision of your Constitution of December, 1942?

A. Not if that is a copy of our Constitution.

Q. Well, have you any reason to believe this is not a copy?

A. No, I recall those articles and sections were amended. I don't recall if it was in 1942 or 1943.

Q. Would it assist your recollection if I told you
223 that this document bears the stamp, "Plaintiff's Exhibit No. 6, L. T. Funk, Reporter," which would be the stamp of a court reporter where it was received in evidence, where your counsel was present, as such Constitution? If you have any serious doubts about the authenticity of it, I would like to have you state it.

A. I have no doubts.

Trial Examiner Jaffee: Just to clear the record, that stamp is in connection with some other case?

Mr. Donovan: Yes, sir.

Q. (By Mr. Donovan): Now, referring, in this case, to Petitioner's Exhibit No. 3, which was a Constitution of the Foreman's Association of America adopted at Dearborn, Michigan in November, 1941, I am quoting from the pamphlet on the cover and continuing to quote,

"Amended at Dearborn, Michigan, 1943 Convention."

That, as you may recall, is the document which was introduced here by you as Petitioner in this case, or by your counsel.

A. Right.

Q. Now, Article I in this Constitution which I now read from and, by the way, is this the present Constitution of the Foreman's Association of America?

A. No.

Q. All right, I will come to that in a minute. Ar-
224 ticle I reads as follows:

"This voluntary Association of Supervisory Employees shall be known as Foreman's Association of America."

You recall that change, do you not?

A. I do.

Q. Article II, entitled, "Purposes" reads as follows:

"The purposes of the Association shall be to encourage social acquaintance among supervisory employees to confer and act upon measures for the ad-

vancement of economic welfare of supervisory employees through collective bargaining, and to encourage study, conference and wider learning among supervisory employees to the end that they may improve in the supervision of men and women in the industry."

And Section 2 of Article V, the same corresponding section that I have read from in the prior constitution, reads as follows:

"Any employee of good moral character whose duties require the supervision of other employees or who directs the work of other employees; who may or may not supervise other employees and who is not a member of any other organization recognized by his employer as representing him in collective bargaining may become a member of the Association after having been employed as a supervisory employee for
225 a period of not less than thirty days."

You recall that provision, do you not?

A. I do.

Q. Now, is there anything in your Constitution which limits your membership to foremen?

A. Do you mean supervisory employees or the classification of foremen? Our Constitution limits our organization to supervisory employees.

Q. Well, what is your definition of supervisory employees?

A. My definition of supervisory employees is persons employed by an employer and supervises the work of other employees.

Q. And in the commonly used categories of supervision, where does supervision begin and end, in your judgment?

A. It depends entirely upon the plant you have in mind.

Q. Well, what would you say with respect to the Packard Motor Car Company plant?

A. With respect to the Packard plant, we say that supervision stops when you start from the bottom and go up, starting with assistant foremen and stops with the general foreman.

Trial Examiner Jaffee: Will you read that, please?

(Answer read.)

The Witness: In other words, assistant foremen to
226 foreman to general foremen, is inclusive of supervisory employees.

Q. And is that as far as the Foreman's Association goes in accepting members?

Trial Examiner Jaffee: The Packard plant, you mean?

Mr. Donovan: We are talking about Packard. I would also like to have him answer the question generally, because I do not think that they make distinctions between plants.

227 A. The Foreman's Association of America provides in its Constitution, for supervisory employees.

Q. Just a minute, Mr. Keys—I am asking you whether or not—I would like to have you answer the question.

A. I am going to answer the question.

Q. I do not think what you are saying is responsive.

Trial Examiner Jaffee: Read the question.

(Question read.)

The Witness: You are speaking about Packard now?

Mr. Donovan: That is right.

Q. (By Mr. Donovan) I want to ask the same question with reference to any other of the companies involved in the War Labor Board Panel hearing recently.

A. With reference to Packard's, yes, that is as far as we go in Packard. With reference to any other plant we are going to go just as high as the Company misclassifies foremen. In other words, the Company in its attempt to keep people out of our organization, classify them as assistant superintendents and superintendents falsely. That does not stop us from bringing them into our organization.

Q. So that your membership might well embrace assistant superintendents and superintendents, depending upon your judgment of the situation at the time?

A. Based upon their authority and duties.

Q. Why do you stop, or rather, do you stop at
228 assistant superintendents and superintendents?

A. I believe I stated that we would go just as high as the need may be.

Q. And if there was a need for assistant plant managers and plant managers, you would not consider them immune, I take it?

Trial Examiner Jaffee: I do not think that is a fair question in view of the witness' testimony. There is a distinction between a fact and a name. The witness indicated, as I understand his testimony, at least, that it depends whether or not the name is correctly applied to the fact.

Mr. Donovan: Well, Mr. Trial Examiner, I presume that the testimony is open to more than one construction. I would fairly deduce that the witness has said that the Foreman's Association of America will be the judge of how high in supervision they will go in accepting members into the Foreman's Association of America and that their judgment will be that upon which they will act in taking them or not taking them into membership. I think that is a fair characterization of the witness' answer.

Trial Examiner Jaffee: The point is that your question is assuming something the witness has not agreed to.

Mr. Donovan: I must abide, of course, by the Trial
229 Examiner's ruling as to whether he will allow the witness to answer the question or not.

Trial Examiner Jaffee: Suppose you re-frame the question.

Mr. Donovan: I do not know as though I want to reframe the question and feel that I have carried the question as I want to put it.

Trial Examiner Jaffee: Will you read the pending question?

(The question was read.)

Mr. Donovan: It is related to prior questions.

Trial Examiner Jaffee: The question is excluded.

Q. (By Mr. Donovan) Now, Mr. Keys, as a matter of fact, in the hearing before the War Labor Board Panel here recently, you had foremen witnesses who testified that you did not take superintendents, did you not?

A. That is correct.

Q. But you did take them, didn't you, during your May strikes in Detroit?

A. No, not superintendents. We took employees misclassified as superintendents into our organization.

Q. And you solicited them during those strikes, did you not?

A. We did.

Q. I am referring, of course, to the Foreman's Association of America strikes in May of 1944, and April.

230 A. That is the only one I would discuss with you.

Q. And as a matter of fact, presidents of chapters of the Foreman's Association of America wrote letters and distributed circulars announcing to superintendents that if they would join or become a member of the Briggs Chapter Number 2 of the Foreman's Association of America, that such member would receive the full support and backing of the Executive Board and membership of the Foreman's Association of America, Chapter Number 2 of the Briggs Company, in preventing discrimination.

A. You started your question in the plural and you are now ending it in the singular. If you want my answer as to the plural, it is no, and if you want it as to the singular, it is yes.

Q. You agree with me as to what I say with reference to the Briggs Manufacturing Company?

A. Yes, that was published and distributed.

Q. As a matter of fact, now that you are on Briggs and we will so confine it, you not only solicited superintendents, you carried them down to the Union Hall after beating them up and forcing them to sign membership application cards, did you not?

A. I do not know anything about that.

Q. You recall that that was brought out at a War
231 Labor Board Panel hearing here, don't you?

A. I recall that that was alleged as a fact.

Q. Do you recall that that was brought out with the War Labor Board here?

A. I recall that you claimed that to be a fact.

Q. You recall that that stands undenied on the record in that case today.

Mr. Nelson: I do not believe that would be material,

Mr. Examiner. We are not called upon, either here or there, to make a reply to an accusation of that kind.

Mr. Donovan: I can see its relevancy here on two or three different grounds.

Mr. Nelson: He took the entire matter into Circuit Court and he spent a week on it and got nowhere on it. It has been disputed in a case that involved just that and he did not get anywhere with it.

Mr. Donovan: I can understand counsel's disinclination to go into matters of that kind. That does not mean that we will not do it unless the Commissioner wants us to or not.

Trial Examiner Jaffee: What is it you say is undenied, Mr. Donovan? He has testified that he does not deny that they solicited superintendents in the Briggs Manufacturing Plant during the May strikes.

232 Mr. Donovan: I asked him after that admission something with respect to the manner in which they solicited some of the superintendents as it was brought out and undenied by the Foreman's Association of America in a War Labor Board Panel hearing of recent date here. I asked him whether he recalled that or not.

Mr. Nelson: That has been denied.

Mr. Donovan: That would affect the credibility of the witness, depending on what he answers.

Trial Examiner Jaffee: Do you want him to answer as to the manner of solicitation?

Mr. Donovan: I gave him an incident and asked him about that. I gave him a specific incident. I do not recall the specific frame of my question, but I asked him whether or not that had been denied or disputed in the War Labor Board case where evidence was adduced.

Mr. Nelson: I think that would be an improper question. The allegations were properly made and the pleadings filed in the Circuit Court and they were denied and met at that trial. Obviously, the National Association in every formal way denied the averment made by Mr. Donovan. He knows it was denied. He stood in Court for a week and tried to establish it over the denial of the Association.

Mr. Donovan: I know that we stood in court for a week and tried that case in court without the Foreman's Association of America putting in any evidence whatsoever denying anything.

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Mr. Nelson: We denied the pleadings and it never reached a place where we had to deny the proof.

Trial Examiner Jaffee: In any event, it is irrelevant in this particular hearing. I so rule.

Mr. Donovan: Then the Examiner rules out the question?

Trial Examiner Jaffee: Yes.

Q. (By Mr. Donovan) Now, Mr. Keys, you have said, I believe, that you think the Foreman's Association of America should be an independent union, am I right in that?

A. Yes, I have said that.

Q. And you believe that, don't you?

A. I have always believed that personally, yes.

Q. And what do you mean by an independent union?

A. A union unaffiliated with any other labor organization or manufacturer's association or any other type of organization.

Q. Why do you think it is wise to have the Foreman's Association of America an independent union? What reasons would there be for that?

A. Because we can service our members better.

Q. Why? Why do you say that?

A. Did you say why do I say that?

Q. Why could you service them better as an independent union?

234

A. That is what we believe.

Q. Why do you believe it?

A. Because that is what we think.

Q. What reason do you have for thinking that you are going to be better off as an independent union? You have not given me yet any reason. You say you think so.

A. Because we have been independent since we started. It has worked out very successfully and we are satisfied with it and cannot see any reason why it should change.

Q. Are those the only reasons you can think of?

A. I may have discussed other reasons but that right now is all I can think of, yes.

Q. When you started at Ford's at 62½ cents an hour in 1935, that was it, wasn't it?

A. January 19, 1935.

Q. How much more was your foreman getting than you were?

A. I do not know.

Q. Did you ever make any inquiry about that?

A. No, I did not.

Q. Do you know whether he was getting more than you were?

A. No, I do not.

Q. It might have been that he was getting less, for all you know?

A. I am quite sure he wasn't, but I do not know.

235 Q. And your next raise was—how long were you at 62½ cents an hour? Where you did not know that?

A. I think I told you this morning that I got a raise sometime during the balance of the year 1935, probably in the late fall.

Q. There was a period of several months, then, when you were working at 62½ cents an hour and you did not know whether or not your foremen were paid at a higher rate than you were?

A. I said I never asked him.

Q. You did not know then, did you?

A. No, I did not know.

Q. When did you get your advance of five cents to 75 cents an hour?

A. I think the Company came out with a $6.00 day basic, somewhere in the latter part of 1935 and that is when we got our increase.

Q. At that time, was your foreman getting more than you were, 75 cents an hour?

A. I presume he was.

Q. But you do not know?

A. No.

Q. How long were you at 75 cents an hour?

A. Mr. Donovan, I answered this morning that if you want me to get the dates, I could get them. I do not know them. You said that you did not want them
236 and now you are asking the same questions over again.

Q. You were pretty good on details of the early formation of the Foreman's Association of America and your part in it while you were in Ford's. Are you able to give us any idea of approximately how many months or what the period was approximately when you were on 75 cents an hour?

A. I do not know how many months it was. I told you that I was up to $1.65 an hour.

Q. We will get to that in a minute. Whatever period it was you were on at 75 cents an hour you do not know what differential was maintained by that Company between you, a worker, and the foreman over you?

A. No, I do not.

Q. They may have or may not have had a differential as far as you know?

A. As far as I know, that could be the fact.

Q. What was your next raise from 75 cents? To what?

A. To 80 cents.

Q. Do you remember what year that occurred?

A. No, I am sorry, I do not.

Q. That would be sometime in 1936, would it?

A. Probably.

Q. When you were getting 80 cents an hour, how much more than you was your foreman getting?

A. I do not know.

237 Q. You do not know whether he was getting more than you were?

A. No, but I can find out for you.

Q. You do not know now and did not then, apparently?

A. No, I do not and I didn't.

Q. From 80 cents—How long were you at the 80 cents an hour rate?

A. Oh, several months.

Q. Then you went to what rate?

A. 85 cents.

Q. How long were you at 85 cents?

A. Several months.

Q. That would bring you up to around 1937 or 1938, now?

A. The only increase I ever got which was more than five cents was—

Q. I am asking you only about this increase. You are up to 85 cents an hour now?

A. That is right.

Q. Sometime in 1938, would you say?

A. Possibly.

Q. Well, at 85 cents an hour, how much more than you was your foreman getting?

A. I do not know.

Q. What was your next raise?

A. A nickel, I believe.

238 Q. Now, you are at 90 cents. Do you know, when you were at 90 cents, whether or not your foreman was being paid more than you received as a worker at 90 cents?

A. No.

Q. Did you subsequently get another raise to 95 cents an hour?

A. I believe so, yes.

Q. That was your next raise?

A. Yes.

Q. Were you still ignorant as to what your foreman under whom you worked, received?

A. Right.

Q. Was your next raise to $1.00 an hour?

A. I think so, yes.

Q. Can you tell us about what year you got into the $1.00 an hour rate?

A. I am only making a guess, but it would be about 1940, I would say.

Q. Did you still remain in ignorance as to whether or not your foreman in particular was receiving more than you as a worker under him received?

A. That is right.

Q. Did you subsequently get raised to, I think—you said—you are in 1940 now?

A. Yes.

239 Q. Did you subsequently get raised in 1940 to $1.05 an hour?

A. I did.

Q. Did you still remain in ignorance as to whether or not your foreman was getting more than you as a worker under him was getting?

A. That is right.

Q. Would that bring you up to 1941?

A. I think I got four raises in 1940 up to $1.20.

Q. During 1941 you went up to $1.20?

A. I think I did.

Q. Do you know whether or not your foreman had anything to do with recommending those raises?

A. I wasn't under the same foreman all this time but some of them were recommended, yes.

Q. By your foreman?

A. Yes.

Q. Do you think his recommendation was sound?

A. Yes, I think so.

Q. You think you merited it?

A. Yes.

Q. Were there some men in the department who did not receive recommendations for raises such as you did at the same time?

A. I do not know.

240 Q. You do not know?

A. No.

Q. You wouldn't say that they all received a raise at the same time you were recommended for your raise, though? You are not claiming that, are you?

A. No, I don't know, I said.

Q. You believe, then, in your own individual case, where the foreman recommended you for these raises, that you felt that you had earned it and that he had used good judgment, did you not?

A. In each case where he recommended it for me individually, I thought I earned it although I did not always get it.

Q. At the end of 1941 you were at $1.20 and in 1942 you got more raises?

A. No, not 1941. I said 1940.

Q. At the end of that year?

A. I said I think in 1940 I got four raises, bringing me up to $1.20.

Q. That is what I understood. Then you got more raises in 1941, didn't you?

A. Yes, I went up to $1.65 when they moved me to the Aircraft Building.

Q. In 1941, by successive stages, from $1.20, you went to $1.65, is that right?

A. No.

241 Q. I thought that is what you just said.

A. I said I was paid $1.65. I making $1.20 approximately at the end of 1940 but when the UAW signed the contract with the Ford Motor Company and established their new wage scales, Ford Motor Company had to give me 45 cents an hour in one lump sum more to bring me up a nickel more than the men I was supervising.

Q. When did you become a foreman, as between 1940 and 1941?

A. When did I become a foreman?

Q. Yes.

A. I have been a foreman all the time you have been talking about here, ever since the first six months.

Q. You testified you did not go in as a foreman.

A. No, I was on the job about six months when they asked me to be a straw boss.

Q. Well, you do not object to giving us now the date when you became a foreman, do you?

A. No.

Q. Well, when was it?

A. I thought it was in the summer of 1935, somewhere in the month of May. That's when they asked me if I would be a straw boss. Later on, the records showed they had not reported me as a foreman and hadn't until

242 sometime later. I will say I was acting in the capacity of a supervisory employee after the first six months of my employment, up to the time I left.

Q. When did you, in your own mind, first become a foreman?

A. In 1935.

Q. But you seem to be unwilling to grant yourself the full status of a foreman? It was only some sort of paper affair. What is the truth about that?

A. Well, they told me I was to be a foreman and I took their word for it.

Q. Did you do a foreman's job from that time on?

A. I supervised other employees, yes.

Q. And you gave them the directions as you testified this morning?

A. I did.

Q. Between then and the end of 1941 you were receiving $1.65 an hour?

A. And five cents for nights, when I was on the night shift.

Q. Five cents an hour night bonus?

A. Yes.

Q. You were undoubtedly, then, in your own mind, a regular foreman, were you not?

243 A. That's right.

Q. How much more were you receiving as a regular foreman than the workers under you at the time?

A. At the time I left, do you have reference to?

Q. 1941. Any time in 1941.

A. Well, there was a time when I was making less. That's when they paid off the UAW workers under their contract, but they immediately, within the following pay or two—as I stated, I got 45 cents, a forty-five cent raise and it was made retroactive to the date of the other employees and that gave me, I think, a fifteen cent differential above them.

Q. And about what time, now, did that take place, the fifteen cent differential?

A. Well, that would be—when they made the payoff in the early part of 1941—

Q. (Interposing) Just approximately, Mr. Keys.

A. Well, it was in the summer of 1941, somewhere in the Spring.

Q. So that, by the time—

A. (Interposing) No, I beg your pardon, it was following the signing of the contract with the UAW, so it would have to be after June because that was signed in June. It was in the fall of 1941.

244 Q. So at least by the Fall of 1941 you know that as a foreman you were on the basis of fifteen cents—or fifteen percent, did you say—above the workers under you?

A. I said I thought I was making a fifteen cent differential at that time.

Q. You are not sure of that, though?

A. No, I don't recall what the highest paid employee under my supervision was getting at that time.

Q. What was the differential situation in 1941 at the Ford Plant? I am speaking now as between workers and foremen.

A. Well, some foremen were making as little as a nickel more. We had some cases who were making the same; some who were making less and a few who had made ten, fifteen and possibly up as high as 25 cents more.

Q. In your judgment—I am asking you as of the present time now—should there be a differential between the foremen and the workers under them in favor of the foremen?

A. Definitely, yes.

Q. You feel quite positive about that, do you?

A. I do.

Q. And about where do you think that ought to be?

A. It depends on the classification of the foreman and the rates of pay of the people under his supervision.

Q. Well, could you illustrate by giving us sample-
245 differentials that would have your approval?

A. I think the first step in any instance should be at least 25 cents an hour.

Q. Up to as high as a differential of what an hour?

A. I would like to see a dollar. I don't know of any that go that high.

Q. Why do you think foremen receive such a marked differential in pay as between themselves and the workers under them?

A. Because they are employed to supervise and take on certain responsibilities that the other people do not take on.

Q. And they are called upon to exercise judgment that the workers do not have to exercise, among other things?

A. That's right.

Q. As you say, they assume responsibilities that the workers with their hands do not have to assume?

A. Yes, the individual worker working on a machine is only responsible for that one machine. The foreman is responsible for all the machines under his supervision.

Q. He is also responsible for the other things that we went over this morning in detail, is he not?

A. I don't recall all we went over this morning, but he is responsible for seeing that the work is produced.

Q. You recall we enumerated a rather long list
246 which you apparently admitted were the foreman's job and were up to him. Do you recall that?

A. Yes, I recall some of it. I don't recall every detail.

Q. Now, Mr. Keys, would you give me at this place in the record again the date when the Foreman's Association was officially organized?

A. Well, we started to organize in August of 1941. The first meeting and first official election of officers and adoption of constitution was November 2, 1941.

Q. Prior to that time, had there been any strikes of foremen in the Detroit area that you know of?

A. Not that I know of. They couldn't strike; they were unorganized.

Mr. Donovan: I will ask that that be stricken out as unresponsive, Mr. Trial Examiner.

Trial Examiner Jaffee: I think it may stay.

Q. (By Mr. Donovan) Now, Mr. Keys, you have approximately 32,000 members?

A. Yes.

Q. And you have a membership in Wayne County?

A. Yes, we have members in Wayne County.

Q. That is right, and in what other counties in Michigan?

A. Well, that would be rather difficult for me to give you without checking our records.

247 Q. Do you have them in Genessee?

A. I imagine so; I couldn't say for a certainty.

Q. Well, is your principal membership here in Wayne County?

A. I would say yes.

Q. And in Oakland County?

A. Yes, in the Metropolitan Area.

Q. In the Industrial Metropolitan Area?

A. Yes, mainly.

Q. You also have membership in other states, do you not?

A. Yes.

Q. What states, for instance?

A. Well, Ohio, Illinois, Indiana, and Alabama, California. There are 17 states all told.

Q. Seventeen states all told?

A. Yes.

Q. Has the Foreman's Association of America today any contracts in existence excepting the two that you mentioned, the Ford Motor Car Company and the United Stove Company?

A. No.

Q. How many members, approximately, does the United Stove Company have?

A. Members?

Q. How many employees, rather, does the United
248 Stove Company have?

A. At the present time, they have, I think, around 300.

Q. And how many foremen?

A. At the present time, they have around ten or eleven.

Q. Now, when you were giving us a list of the — as I assume you intended to do in your prior showing in this particular case — do you recall the mention of the strikes that had occurred at Ford's since the FAA obtained its contract?

A. Yes. I talked about them.

Q. Do you recall how many you mentioned?

A. Two that we considered as strikes and one we didn't consider as a strike.

Q. That is my recollection also, Mr. Keys. You enumerated three, one of which you questioned as to whether or not it was really a strike.

A. That is right, they didn't leave the building or anything like that.

Q. Although you do admit that the Press so considered it and so reported it in the Press as a strike?

A. That is true.

Q. Could you give me the dates of those, Mr. Keys, or could you refresh your recollection?

A. I discussed one strike on October 16, 1944; one on November 16, 1944 —

249 Q. (Interposing) Just a minute, now. Not so fast, please.

A. November 16, 1944, and the incident we didn't consider a strike. I didn't know the date and assumed it was somewhere in the latter part of July.

Q. Of 1944?

A. Of 1944.

Q. As a matter of fact, on June 21, 1943, did you not have a foreman's strike?

A. Yes, I told you about that one, but we are talking about strikes after the contract now; not prior to the contract.

Q. In June, 1943, the foremen were engaged in organizing, were they not?

A. Yes, and there was a strike that I described but that was prior to the contract.

Q. I am not disputing you there, Mr. Keys. Your contract date was what, Mr. Keys?

A. May 9th, 1944.

Q. Your contract date was May 9, 1944?

A. That is right.

Q. You would have some sort — you did have some sort of agreement, though, with them antedating that, did you not?

A. Yes, November 5, 1942, the Wage and Classification Agreement.

250 Q. You had a Wage and Classification agreement with them?

A. That is right.

Q. And you had strikes during 1943, did you not?

A. Yes, the strikes I mentioned in my testimony.

Q. You had one on June 21, involving 2700 foremen, did you not?

A. (No response.)

Q. You do not remember that one?

A. I don't remember having stipulated the number, but I can tell you very shortly.

Q. I am not especially interested in the number. If you do not recall the number, you do recall the event, do you?

A. You are talking about June 21, 1943?

Q. That is right.

A. Yes, I stated that about 2,000 walked out.

Q. Do you recall that there was a strike on June 26, 1943?

A. No, I do not.

Q. And that the Free Press, on that date, reported a strike at the Ford Plant or the foremen?

A. No, I do not.

Q. Do you recall any strike — and I wish you would answer the question whether or not you used the term "work stoppages" or "strike" — on October, rather, on August 6, 1943?

251 A. I did not describe any incident as a strike on that date.

Q. I know you did not. I am asking you if you now recall it?

A. That is probably the one I couldn't recall the date of it in the Pressed Steel Building.

Q. In the Pressed Steel Building?

A. Yes.

Q. Do you recall one on December 3rd, 1943?

A. No.

Q. That is one you do not recall?

A. December 3, 1943?

Q. That is right.

A. No, I do not.

Q. Do you recall one on December 6, 1943?

Mr. Nelson: Where? At Ford's?

The Witness: I presume you are talking about the Ford Motor Company?

Mr. Donovan: That is right. I think the witness so understands.

The Witness: Will you give me that date again?

Q. (By Mr. Donovan) December 6, 1943.

A. December 6, 1943? No, I do not recall any.

Q. Do you recall one as of February 25 and 26, 1944?

A. February 25th and 26th?

252 Q. Yes, of 1944.

A. Of 1944?

Q. That is right, involving 600 foremen.

A. No, I don't recall it.

Q. You do not recall that one?

A. No.

Q. You do recall one as of December 21 and 22 of 1943, though, do you not?

A. I testified that there was a strike on June 19th of 800 foremen walking out and a mass meeting was held on June 22nd; that they went back to work on June 23rd and on June 24th they walked out again. To the best of my recollection, and according to our records, those are the facts.

Q. The last date I asked you about was December 22nd and December 21, 1943.

A. And I said I do not recall it. Oh, I stated in my testimony there was a strike on December 21 at the Bomber Plant.

Q. That was my recollection, Mr. Keys. Now, you do recall that strike?

A. Yes, I do.

Q. Mr. Keys, have you ever read the publication of the United States Department of Labor Division of Labor Standards, Bulletin Number 66, issued in 1944, entitled, "The Foreman's Guide to Labor Relations"?

253 A. No, I never have. I had a copy of it mailed to me and I intended to read it, but I never have yet.

Q. Do you recall the pamphlet I hold in my hand, as such?

A. It looks like it, yes.

Q. Have you read that pamphlet?

A. No, I haven't.

Q. I wish you would tell me whether or not you will agree with certain statements made with reference to fore-

men in this bulletin of the United States Department of Labor. Among other things, it stated in this bulletin as follows, under the heading of "Foremen's Responsibility" on page 3:

"The foreman is the operating executive of Management."

Do you agree or disagree with that statement of the Bureau?

A. I disagree with it.

Q. It is also stated on that page that:

"You are the initial contact for workers and shop stewards."

Do you agree or disagree with that?

A. I disagree with it, to the extent that it is provided in the contracts for that to be the initial stage.

Q. Do you agree with this statement:

"The workers' opinion of a company is often formed largely on the basis of the employee's impression created by your statements and actions."

254 Do you agree with that?

A. I would agree with that.

Q. On page 12, the statement is made as follows, under the heading of the "Foreman and the Shop Steward":

"It goes without saying that you" (meaning the foreman) "are the department executive."

Do you or do you not agree with that?

A. I do not agree with it.

Q. You do not agree with it?

A. No, sir.

Q. Do you agree with this statement on page 10:

"It goes without saying that the foreman's primary responsibility is to protect the interests and rights of Management."

A. Would you read that again.

(Record read by the Reporter as follows:

"It goes without saying that the foreman's primary responsibility is to protect the interests and rights of Management.")

A. Protect the rights and interests of Management? No.

Q. Do you agree with this statement on pages 7 and 8, this is under the heading of the discussion of the National Labor Relations Act in the Foreman's Guide as published by the Department of Labor in its Bulletin Number 60:

"This brings us to one of the most important
255 points to be remembered in connection with the National Labor Relations Act. This law was never intended to restrict the foreman's freedom in the exercise of his supervisory responsibilities."

Do you or do you not agree with that?

A. Yes, I would agree with it.

Q. Now, Mr. Keys, you said earlier in the examination, I believe it was this morning, that the only support you received from the CIO—I mean by "you" the Foreman's Association of America—in your strikes and other activities was a moral support. Do you recall that?

A. Yes, I said I knew we had no written or verbal affiliations whatsoever.

Q. And you say you do not receive cooperation from the CIO on the occasions of strikes and other occasions?

A. Well, we receive cooperation to the extent that the humane interest involved is affected. Certainly, they feel sorry for us and give us moral support, I suppose.

Q. You say they worked hard for you?

A. I didn't say they worked for us at all. I didn't say anything like that.

Trial Examiner Jaffee: Would you read a couple of answers back?

(Last two answers read.)

Q. (By Mr. Donovan) Mr. Keys, during your organi-
256 zational efforts in 1943, the Michigan State CIO Council issued a very effective bulletin on behalf of the Foreman's Association.

A. Not for us. They passed it around and mailed me a copy.

Q. And among other things, it calls the public's attention by resolution to the claims of discrimination by the foremen, did it not?

A. It did.

Q. And it said that this Convention of the Michigan CIO State Council can go on record to assist them in their fight to obtain bargaining rights and other rights established by the Wagner Act, did it not?

A. It did.

Q. It further indicated that copies of that resolution of the CIO had been sent to R. J. Thomas and Philip Murray and the Foreman's Association of America?

A. It did.

Q. And you recall, likewise, do you not—and to refresh your recollection, do you recall the former witness McNally, who testified and was examined by you in the War Labor Board case?

A. Yes, I recall Mr. McNally.

Q. And he testified as to the distribution of a circular by the CIO at Murray's on behalf of the activities
257 of the Foreman's Association of America?

A. I don't recall his testimony, but if you say he said it, why, you must have taken it from the record.

Q. Do you recall that there was a bulletin issued which Mr. McNally recognized and admitted was the CIO dodger in question issued on behalf of the Foreman's Association?

A. No, I don't recall it. I know there was some discussion about a bulletin having been distributed by someone and there was some discussion about who printed it.

Q. You do not recall the witness McNally being shown this pamphlet in question, which was marked Exhibit 32 in that case?

A. Yes, I recall that.

Q. And it was shown to him and it was read into the record?

A. I recall it was shown to him. I can't recall his testimony.

Q. You do not recall anything about the contents of that CIO publication on behalf of the Foreman's Association now?

A. I think it was something about supporting the foremen in their fight for recognition for collective bargaining, something like that. I recall that much of it.

Q. And it was addressed to the Murray-Ecorse foremen, was it not?

A. I believe it was.

258 Q. And it said to them, in effect, "You know we won't let you down and we pledge that we will not let you down in disputes you may have in the future" or words to that effect?

A. Well, if you would let me read it, Mr. Donovan, then I could answer your questions yes or no. I don't recall the contents of it.

Q. All right, here it is, Mr. Keys. Do you recall it now?

A. Yes, I recall it now.

Q. Do you recall now the CIO statement in your behalf that the history of unionism—I am quoting here:

"The history of unionism at the Ecorse plant of the Murray Corporation of America is such that it has been one of the most outstanding in mass production industries. Many of the men who made possible the outstanding record at the Murray Ecorse plant have since left and are employed elsewhere. And in their place other persons have come in. We have every reason to believe that these newer employees will perpetuate the traditions which their earlier fellow unionists established. The unity which has existed at the Murray Ecorse plant existed because these employees were willing to sacrifice themselves in order to help their fellow unionists.

"Now the time has arrived when the long standing
259 record of unionism at the Murray Ecorse plant is being seriously tested. The Murray Corporation of America is and has been attempting by all means to destroy the union which your foremen have created. Are You as a Union Person Going to Permit the De-

struction of Your Foremen's Union? With your cooperation your foremen will succeed in their struggle for contract rights such as you enjoy. You will be enticed and pressured by the Murray Corporation to weaken the position of the foremen's union. Will You as a Union Person Be Tempted?

"Labor unions up until the formation of the Foreman's Association of America have always had the threat of foremen who would employ scabs demanded when to do so by management in order to weaken the position of a labor union. Since the founding of the Foreman's Association of America labor no longer need worry of foremen who are members of the Foreman's Association of America placing scabs in the jobs of workers who are idle because of a labor dispute."

You now recall this, do you not?

260 Q. (By Mr. Donovan): Do you now recall this circular?

A. I recall the circular having been introduced at the War Labor Board hearing but I do not recall what the testimony about it was.

Q. Do you know whether or not the CIO in writing this language that I now quote,—do you know what it meant, whether it was referring to the dispute between the foremen and management or not? Just give me your own understanding of it. (Reading):

"We, the Murray Ecorse foremen, know you won't let us down, and pledge that we will not let you down in disputes which you may have in the future."

Did that refer, in your opinion, to your disputes between the foremen and management?

A. First, I do not know whether the CIO published it or not, I do not know who published it, and second, I have no way of knowing what they were thinking and what they intended when they wrote it.

Q. Then you say you do not know what it means?

A. I don't know what it means.

Q. You were having disputes with management, weren't you?

A. Not I, the Foreman's Association of America was having disputes, yes.

Q. You were asking for recognition of collective bargaining and you were having disputes with com-
261 panies about refusal to bargain collectively with the foremen?

A. That is true.

Q. And you were engaged in strengthening your organization and perfecting it, at or around this time, were you not?

A. At all times, yes.

Q. And you are still engaged in those efforts, are you not?

A. That is true.

Mr. Donovan: May we have a recess?

Trial Examiner Jaffee: All right, we will have a ten-minute recess. Gentlemen, please come back on time.

(At this point a short recess was taken.)

Trial Examiner Jaffee: We will be in order, gentlemen.

Q. (By Mr. Donovan): Mr. Keys, do you recall the fact that in Chicago at the Dodge plant, they had a so-called—perhaps I should not say so-called—they had a CIO paper called the "Dodge Victory News"?

A. No, I do not.

Q. It is a publication?

A. No, I do not.

Q. And that Mr. Thomas at or around March 24, 1944 issued a statement in large bracket type in that CIO organ with reference to foremen entitled "Flash! Foremen Organize"?

A. I have read similar articles in various publications, but I do not know what the names of them are, off-hand.

262 Q. I show you a copy of this article of Mr. Thomas and ask you to refresh your recollection. Will you look at it and recall whether or not this was introduced as an exhibit in the foremen's panel case and read into the record? Will you read it and see if you can refresh your recollection on it?

A. It sounds familiar but I do not recall where I heard

it or read it. It could have been at the War Labor Board proceeding.

Q. You do not recall the Chrysler counsel introducing this statement in evidence and reading it into the record?

A. I recall that he did read a statement.

Q. And do you recall that it was a statement of R. J. Thomas with reference to the organization of the foremen?

A. It seems to me it was. I am not definite on it. It seems to me that it was.

Trial Examiner Jaffee: You are not sure, Mr. Keys, whether the clipping just shown you was the one?

The Witness: No, I am not positive.

Q. (By Mr. Donovan): Do you recall whether or not Mr. Thomas publicly welcomed the organization of the Foreman's Association of America?

A. I do not know whether he did or not.

Q. You do not recall this article having been read into the record in the foremen's panel case?

263 A. I recall an article that was read and that one you have just shown me sounds familiar when I read it but I could not say definitely that I am positive that that is it.

Q. Do you recall the language in this article as follows:

"Welcome, Foreman's Association of America! For the benefit of foremen who have not got the inside dope here it is—"

Trial Examiner Jaffee (Interposing): You have shown it to the witness and he has said that he does not recall definitely that that is the one. What, therefore, is to be gained by reading from it and asking about the facts contained therein?

Mr. Donovan: He seems to have a fair recollection of it. Enough so that if I asked him whether he recalls these statements as made by Mr. Thomas, President of the UAW-CIO—he ought to be able to definitely affirm or deny them.

Mr. Nelson: The trouble with it is that at the most we have only a press report. That evades getting anybody that knows what was said. I object to it because it is pure hearsay. Mr. Keys and the Association are obviously in

nowise responsible for any printing that Mr. Thomas or any other officer of organized labor may have of the Foreman organization. It is of interest to us but I
264 do not see how, Mr. Examiner, we can be bound by it.

Trial Examiner Jaffee: I think Mr. Donovan has another purpose in mind.

Mr. Donovan: Am I permitted to finish the question I wish to ask him?

Trial Examiner Jaffee: Finish the question.

Q. (By Mr. Donovan): (Reading):

"Welcome, Foreman's Association of America! For the benefit of the foremen who haven't got the inside dope, here it is. The first general get-together of this International Association will be held at 2 P. M. Sunday, March 26, 1944, at Nielsen's—78000 South Western Avenue. Liquid refreshments will be served and there will also be a delicious Smorgasbord. On the program for that meeting is the signing of the charter, acceptance of new members, a short talk by an International representative of the Foreman's Association on foremen's problems in Chrysler plants and arranging of a social program for the spring season. There will be over 200 foremen and general foremen in attendance and any foreman who is interested is invited to attend. The initiation fees and dues are the same as our own UAW-CIO—$2.00 initiation fee and $1.00 per month dues.

We, of the UAW-CIO, watch the organizing of this
265 group with interest, as we know if the foremen are organized they will be better equipped to understand our problems and the principles and facts of grievance procedure through Union negotiation."

You do not recall that information or that testimony having been read into the record in the foremen's panel case, Mr. Keys, or do you?

A. Without going over the transcript I could not say. I do not recall it but I do recall a pamphlet was read or a bulletin or something like it, I do not recall.

Q. If I told you that that was introduced as a page

from the CIO Dodge Victory News, the issue of March 24, 1944 in Chicago, the Dodge Chicago plant, would that assist your recollection any?

Mr. Nelson: My objection to that question, Mr. Examiner, is that it would not make any difference. He cannot establish a document by showing that it was introduced in evidence in some other proceeding before some other tribunal. He is bound now by what the witness answers. By all the rules of evidence and what is fair he is bound by the witness' answers. The witness has already answered that he does not know as to the authenticity of it.

Trial Examiner Jaffee: The immediate question is whether or not the witness recollects or is refreshed
266 by counsel's statement. He may answer as to that.

Mr. Nelson: Suppose it was, Mr. Examiner, at most he would show it was offered in some other proceeding.

Trial Examiner Jaffee: I understand.

Mr. Nelson: That would not qualify it in this proceeding.

Trial Examiner Jaffee: We can only go one step at a time. Would it refresh your recollection?

The Witness: No.

Q. (By Mr. Donovan): You do not know whether or not R. J. Thomas, President of the UAW-CIO, ever encouraged or cooperated with the Foreman's Association of America in its organizational efforts?

A. No.

Q. Did you ever talk to Mr. Thomas?

A. Yes, many times.

Q. About the Foreman's Association of America?

A. Yes.

Q. Did you ever talk to anybody else connected with the CIO—the high officials in the CIO about the Foreman's Association of America?

A. Yes.

Q. And you never received any assurances of welcome and cooperation such as that contained in this article I read you and which you say you do not remember?
267 A. All I ever received is that they thought our movements were right in principle and that we would have their moral support, that is all.

Q. And that is the extent of your cooperation from the CIO, as I believe you said this morning?

A. To my knowledge, yes.

Q. Well, you would be pretty apt to know about that as president of the Foreman's Association of America, wouldn't you?

A. I would, yes.

Q. You recognize the CIO as a powerful, strong union, do you not, Mr. Keys?

A. I do.

Q. As a matter of fact, they hold the production contract in practically all the industries and companies in Detroit in which the Foreman's Association of America have sought to enter an organization, isn't that right?

A. That is right.

Q. Isn't it true that a great many of the foremen in your Association have come up through the CIO ranks and file of production workers?

A. That is right.

Q. In this area?

A. That is true.

Q. And have had experience with CIO Union methods?

268 A. That is true.

Q. Now, in the summer of 1943, didn't you go down to Cleveland to confer with CIO high officials?

A. I did.

Q. And that included R. J. Thomas, did it not?

A. It did.

Q. And Mr. Phillip Murray?

A. It did.

Q. And you discussed Foreman Association of America affairs with those gentlemen at that time, did you not?

A. I did.

Q. At the Hotel Statler?

A. Right.

Q. And you still say you received no assurances of cooperation or encouragement?

A. Only their moral support.

Q. Wasn't it shortly after that that the CIO announced, within your knowledge, that they would—if anyone started

fussing around with any organization—started fussing around or interfering with the Foreman's Association of America that the CIO would take them over?

A. I never heard such a statement and I never read such a statement.

Q. You never heard that?

269 A. I was told by people whom you have mentioned in Cleveland that if we had any strikes and put up a picket line they would cross them and not pay any attention to them. That is the kind of support we got. If that is what you want to know.

Q. Wasn't it a short time after that meeting also that the CIO announced that they would not permit any CIO rank and file member to be made a foreman during the strike of the Foreman's Association or while such strike was in progress?

A. I read such a statement in the newspapers in this town, yes.

Q. And the only information you got from the CIO on its cooperation with the Foreman's Association of America was from the newspapers, is that right?

A. The only cooperation we got?

Q. The only knowledge you had of the CIO on cooperation with the Foreman's Association of America was what you read in the newspapers, is that right?

A. That is right.

Q. And you do not know very much about their cooperation in the April and May strikes of the Foreman's Association of America here, do you?

A. Not unless you describe the cooperation. I do not know what you have reference to.

270 Q. Well, I want to ask you a little more about that shortly. As a matter of fact, Mr. Keys, do you recall that you had a War Labor Board hearing January 6, 1944? That is, I mean by "you" the Foreman's Association of America.

A. In Washington?

Q. Yes.

A. I recall that.

Q. And do you recall that from January 13th to the 21st

you had a series of strikes by the Foreman's Association of America at the Chrysler plants?

A. I recall the series of strikes. I am not positive of the dates.

Q. And do you recall during the hearing of the Foreman's case before the War Labor Board panel of reminding Mr. Iserman, the Chrysler counsel,—I think I can quote your words exactly: "Don't forget, Mr. Iserman, that we had eight more plants go out of Chrysler plant—of foremen in Chrysler plant." Then Mr. Iserman said, "Yes, are you proud of it?" and you said, "No." Do you recall that?

A. No.

Q. You don't remember that testimony?

A. No. Where did that testimony take place? I never testified before the Board. Mr. Nelson testified.

271 Q. Now, you were sitting in the chair here that corresponds to the chair that the Board counsel occupies and Mr. Iserman was addressing the War Labor Board panel and you interrupted him with the interjection "Don't forget, Mr. Iserman, we had eight other Chrysler plants out," meaning the Foreman's Association of America, and Mr. Iserman said, "Yes, that is right, are you proud of it?" And you said, "No." You do not recall that at all?

A. Is that in the record?

Q. For your information it is in the record, Mr. Keys.

A. I do not recall the statement. If it is in the record I said it.

Q. If it was shown to you you would not deny it, would you?

A. I would not deny it if it is in the record, no.

Q. Now, as a matter of fact, when the foremen staged a strike—take for instance the series of strikes that took place in the Briggs, Hudson, Packard, Gar Wood, and Aeronautical Products and the strikes that were mentioned in the War Labor Board hearing here,—as a matter of fact, it was quite helpful to the objective of the Foreman's Association of America, was it not, during those strikes, to have the CIO refuse to allow a CIO rank and file mem-

ber to be made a foreman? Wasn't that an advantage to the Foreman's Association of America who were on strike?

A. Yes, I would say it would be.

272 Q. It would tend to keep more foremen from functioning for the Company, would it not?

A. Well,—

Mr. Nelson: May I hear the question, please?

The Witness: I did not quite get the question. I am sorry.

Trial Examiner Jaffee: Read the question.

(Question read.)

Q. (By Mr. Donovan): For the Company in the strike?

A. You are referring to the rank and file workers refusing to take foremen's jobs?

Q. Not permitted to by the CIO?

A. Naturally it would.

Q. There were a lot of your foremen out on strike in the plants I mentioned in April and May?

A. Yes, a lot of them.

Q. And there was a need, naturally, on the part of management; for foremen at that time, was there not?

A. I imagine there was. They have them on the job the rest of the time.

Q. And if you could get the rest or enough of the foremen out of one of those plants you could eventually close the plant, as far operation was concerned, isn't that right?

A. That is true.

273 Q. As a matter of fact, you did close some of them, didn't you?

A. We did.

Q. And among others you closed the Milwaukee plant of the Briggs Manufacturing Company, did you not?

A. I believe so. I do not recall whether that was one shut down or not.

Q. Do you recall what the Milwaukee plant of the Briggs Manufacturing Company was making at that time?

A. No, I do not, but it was war material of some kind, I believe.

Q. You do not recall the fact that they were making a plane that the Navy was in urgent need of at that time?

A. No, I do not.

Q. You do not recall having told one of the Briggs Manufacturing Company superintendents that that was a hot plant and that you were going to close it down to get the attention of the War Labor Board?

A. I do not recall it, I never said it.

Q. As a matter of fact, your action — the action of the Foreman's Association of America in those April and May strikes, did get the attention of the War Labor Board, did they not?

A. Eventually. Several months after the men were back at work.

274 Q. Well, on May 8, 1944 there was a decision of the National War Labor Board in the Soss case which gave the Foreman's Association of America some encouragement, you remember that?

A. I remember the decision. I went down and argued the case and we felt it was a right decision for the Board to make. That is one of the reasons we had this petition filed at present time.

Q. On May 18, 1944, following your strike — by the way, when did those strikes end which we have been talking about last spring in Detroit?

A. If you want dates I will give them to you.

Q. Well, it was at or around the first week in May, wasn't it?

A. May 17th, 18th and 19th that most of them terminated in those cases.

Q. May 18th, 1944 the National War Labor Board passed a resolution appointing a special panel to consider the foremen's situation, did they not?

A. You have reference to the resolution based on the Jesse Friedin opinion?

Q. I have reference to what I said. The resolution of the War Labor Board appointing a special panel, to consider the problems and the situation of the Foreman's Association of America?

275 A. Yes, they adopted a resolution based on the Chrysler strike of a previous date and not the strikes you have reference to.

Q. As a matter of fact, such a panel was appointed and came to Detroit and held extended hearings?

A. That is right.

Q. At which you presented the case for the Foreman's Association of America?

A. That is right.

Q. So you did succeed in getting the attention of the governmental agency in question, Mr. Keys, did you not?

A. Yes, they took jurisdiction. Under the War Labor Board Dispute Act they had no alternative. That is what they were established for.

Q. One of the reasons you stated those strikes was to compel some act by the War Labor Board to further your organizational efforts?

A. No.

Q. And your Union objectives?

A. Our Union objectives, yes.

Q. And they were collective bargaining and recognition?

A. Recognition and collective bargaining and grievance machinery, which, of course, goes with it.

Q. And you had hoped to obtain among other things your objectives, in staging these strikes — and that
276 is to obtain a certain degree of publicity, has it not?

A. No, sir.

Q. For the furtherance of your Union objectives?

A. No, sir. I wish we hadn't had a lot of publicity.

Mr. Donovan: Will you mark that as Company's Exhibit 2?

(Thereupon the document above referred to was marked Board's Exhibit No. 2 for identification.)

Q. (By Mr. Donovan): Did you in July, 1944 have a publication of the Foreman's Association of America known as "The Supervisor"?

A. Yes, we have had that since we established our organization.

Q. Did you from time to time contribute articles in that publication?

A. I did.

Q. Didn't you have an article in Volume III, No. 5 of July, 1944 which contained the following statement, and

I quote: "The truth will out," by Robert H. Keys? This article is under the heading "The Voice of Organized Foremen."

I am now quoting from your article:

"When thousands of the members of our Association walked off the job recently in some plants in this area, we organized foremen received nationwide
277 publicity."

Did you make that statement?

A. Yes, and we did receive it.

Q. And it inured to the benefit of your Union objectives, didn't it?

A. No, I do not think so.

Q. Then why were bragging about the publicity in this connection?

Trial Examiner Jaffee: Just a minute. He did not say that he was bragging about it.

Q. (By Mr. Donovan): Why did you state that?

A. I made a statement of fact. Mr. Donovan, I am used to making statements of fact.

Q. And you did it with no idea that the closing of the plants making Navy planes would have anything to do with your ability to attract the War Labor Board's attention for some action in favor of foremen?

A. That was a very long question and I did not follow it. Would you read it back to me, please, Mr. Reporter?

Trial Examiner Jaffee: Read the question, please.

(Question read.)

The Witness: We were not attempting to attract the War Labor Board's attention. The answer is no.

Q. (By Mr. Donovan): You were not trying to attract the attention of the War Labor Board?

278 A. No, the strike was not.

Q. As a matter of fact, wasn't it these strikes that did attract the attention of the War Labor Board and give you concessions which resulted in your calling the strike off?

A. Mr. Donovan. I cannot speak for the Board. I suggest you ask them.

Q. Did they ever ask you to call these strikes off?

A. Yes, they asked us to call them off.

Q. And you did that?

A. We did.

Q. Under what conditions?

A. To go back to work and that they would consider the situation.

Q. They would consider the situation? After that they appointed a panel, didn't they?

A. Yes, after that they did.

Q. And you had a hearing lasting some two months or better before the panel?

A. That is right.

Q. And that panel is still considering the situation of the Foreman's Association of America and its membership?

A. I presume it is. I never heard anything from it.

Q. You know that that is the case and that it has not been decided and that no report of recommendations
279 has been issued as yet, don't you, Mr. Keys?

A. I have no knowledge of it if it has.

Q. Don't you want to make the fair statement, which we all know, that it is still pending and undecided?

A. I presume it is but I have never heard a word since the closing of the case.

Q. Then, so far as you know it is still pending and undecided?

A. Yes, so far as I know it is still pending and undecided.

Q. Didn't you, shortly after this trip of yours to Washington, announce that you had gained what you had gained by the strikes and your actions in staging them? Among other things that you had obtained the appointment of this War Labor Board Panel and the contract at Ford's and the right to present grievances to the National Labor Relations Board? Did you ever make any statement like that?

A. The contract was not the result of those strikes. I wouldn't make such a statement about that contract. I may have made the statement that we had a contract, and I do

not deny that I made the statement that we had made some gains as an organization. We have made gains. We would certainly be a very poor organization if we didn't.

280 Q. Mr. Keys, going back to this pamphlet which I questioned you about a few minutes ago and which Mr. McNally, one of your former witnesses, identified at the War Labor Board Panel hearing, I wish to refresh your recollection now a little further by some questions and answers wherein Mr. McNally was being questioned, and see if you can now give us a better recollection than you were able to before. This pamphlet that you were shown and which you read had been marked in that proceeding as Murray Exhibit No. 32, and these questions were asked of Foreman McNally:

"Q. I will show you a photostat copy of pamphlet marked Murray Exhibit No. 32, and ask you if you have ever seen a pamphlet of that kind before?

"A. I think I have.

"Q. And wasn't that pamphlet handed out by members of the Foreman's Association to production workers of the Murray Corporation, at the Ecorse plant, during that strike, around July 6th or 7th, 1943?

"A. If I remember correctly, that was handed out not only by foremen; it was handed out by workers, too.

"Q. It was handed out by workers, too?

"A. I believe it was.

"Q. In other words, the foremen of the Murray plant handed it out and production workers handed it out?

"A. I believe that's the way it was.

281 "Q. And when we are talking about production workers, we are talking about Local 2, UAW-CIO production workers, are we not?"

Do you recall any of that testimony, Mr. Keys, with respect to this Dodger or pamphlet now?

A. Yes, I think I do. If you are reading from the record, that must be the testimony, and I heard it, because I was there.

Q. I am reading from the reporter's record of the Panel hearing of June 28, 1944.

A. Yes.

Q. Now, Mr. Keys, does the Foreman's Association of America accept into membership a rank and file production worker?

A. No.

Q. Why not?

A. Because he is not a supervisory employee.

Q. And you regard that there is something like a gap between a rank and file production worker and a supervisory employee?

A. No, not a gap.

Q. Well, they are not eligible for membership in your Association, are they?

A. No; neither are we eligible for membership in theirs.

Q. I did not ask you whether you were eligible for
282 membership in theirs. At any rate, you are not taking them in as members?

A. No, because we do not regard them as supervisory employees.

Q. One of the reasons would be that they have entirely different responsibilities than the foremen do, is that not correct?

A. To a great extent, yes.

Q. Now, Mr. Keys, again on his matter of cooperation with the Foreman's Association by the CIO, you know that—well, take the Briggs plant for one. I refer now to the time of the April and May strikes. You recall those strikes, do you not?

A. Yes.

Q. Do you recall while the foremen were on strike that the rank and file CIO production employees booed foremen who did not go out?

A. I read it in the newspapers.

Q. And they booed the superintendents?

A. I read it in the newspapers.

Q. And that stock and material was hid so as to impede the work of the foremen still remaining in the plant?

A. I didn't read that and I didn't hear it. It is news to me.

Q. You did not hear that testimony before the War
283 Labor Board Panel?

A. I don't recall it about the stock and material.

Q. You would not dispute it if the record were shown to you, however?

A. I would not.

Q. Do you recall that the rank and file production workers in the Briggs plant — and I now refer to the Mack plant — created such a general pandemonium and disorder, pounding on benches, and what-not, that operations had to be suspended by the Navy Department in that plant?

A. Yes, I recall something of that nature.

Q. And that they even booed the army and navy officers who came to the plant in the performance of their duties?

A. No, I don't recall that.

Trial Examiner Jaffee: When you say recall something, do you mean that you recall the testimony or the fact?

A. I recall the fact where I heard it, read it or it was testified to. The way he is asking the questions, Mr. Examiner, he is not confining me to the testimony.

Q. Well, do you believe it happened?

The Witness: I don't know.

Mr. Nelson: Mr. Examiner, I made this objection before. I do not think this is the proper way to show the
284 facts that Mr. Donovan wants to show. He asks the witness if he remembers this testimony taken before the War Labor Board. I said before, what difference does it make if he remembers the testimony as given. It does not establish a fact at all.

Trial Examiner Jaffee: Yes, I agree, unless it is the present witness' testimony.

Mr. Nelson: He has never yet said he knew the fact, He has only said he heard it. That cannot establish the fact. It is only the narration of this witness about what somebody else said.

Trial Examiner Jaffee: Yes, I understand.

Mr. Nelson: I want to be as liberal as the rules permit but certainly no rules would permit a fact to be established in that manner.

Trial Examiner Jaffee: Insofar as your present objection applies to whether or not the witness believes it to be a fact, I will sustain the objection.

Q. (By Mr. Donovan): Now, Mr. Keys, on the strikes that took place in April and May, during that time you were president of the Foreman's Association of America?

A. I was.

Q. And you got reports every day of what was going on?

A. I did.

Q. You met with the presidents and officers of the
285 Foreman's Association Chapters throughout the Detroit metropolitan area during those strikes, did you not?

A. At the National office, yes.

Q. You were frequently conferred with by officers and members of local chapters, were you not?

A. The officers, yes; not so much the members.

Q. Yes, and you were in pretty close touch with what was going on during those strikes, were you not?

A. That's right.

Q. You knew what plants had been closed and when, did you not?

A. I did.

Q. And why?

A. And why what?

Q. And why they were closed?

A. They were closed for lack of supervision.

Q. That was your objective, was it not, to close those plants because of lack of supervision? And by lack of supervision?

A. No.

Q. You did not mean to close any of the plants?

A. We didn't think they would close.

Q. Well, you were hoping you could do it?

A. No. Management always maintained when supervision was out production was maintained at the
286 same level, and we took their word for it.

Q. As a matter of fact, the Briggs plant did maintain its plant at the same level while you were out on strike?

A. I believe so.

Q. And that is why you went to work and intimidated some of those—

A. (Interposing): We didn't intimidate anybody.

Q. And that is why some of them had to stay in the plant for a week at a time, because they were afraid to go home?

A. I don't know why they didn't go home.

Q. And some of them had to move their families out of town?

A. I don't know.

Q. You do not know anything about those things?

A. You said—

Q. (Interposing): Now, all you have to say is yes or no?

A. No, I don't.

Mr. Nelson: You know he does not know.

Mr. Donovan: Do you object to him saying no?

Mr. Nelson: I object to your standing here for purely publicity purposes, as you hope, asking this witness questions which you know he cannot answer as to the facts.

I have been very patient because the Trial Examiner
287 has ruled on this. But I make that objection again, Mr. Examiner, because Mr. Donovan has gone far enough for you to see that he has no proper purpose in going over it this way. He knows this man was not present at the Briggs factory and cannot give him any factual answers.

Trial Examiner Jaffee: Very well. There was no pending question.

Q. (By Mr. Donovan): Mr. Keys, you stated a while ago that the Foreman's Association does not throw picket lines?

A. I don't believe I stated that.

Q. Well, do they?

A. Yes.

Q. You mean, some of your former witnesses testified to the contrary before the War Labor Board?

Trial Examiner Jaffee: I will exclude that.

Q. (By Mr. Donovan): So you did use picket lines during these April and May strikes?

A. They were referred to as picket committees; we never referred to them as picket lines.

Q. And at the Milwaukee plant of the Briggs Company, the CIO production men refused to run the picket line, did they not?

A. I don't know that.

Q. And that closed the plant for Saturday and Sunday, is that right?

288 A. I don't know.

Q. You never heard of that? You do know the plant was closed?

A. I heard it.

Q. What other plants did you hear were closed?

A. Packard Motor.

Q. Any others?

A. No, that's all I recall.

289 Q. Did you discuss those matters with the War Labor Board personnel when you went to Washington?

A. I do not—

Mr. Nelson: (Interposing) I do not see what relevancy that would have. I was there, he was there, and twenty other men were there, but what we said to the War Labor Board, I do not see what relevancy it would have here.

Trial Examiner Jaffee: You may finish your answer.

The Witness: I started to say that I do not know which appearance before the Board you have reference to.

Q. (By Mr. Donovan) Were you not down in Washington in the Spring of 1944 at or around the time of these strikes?

A. Yes, following—the strikes were called off from Washington by long distance telephone.

Q. As a result of your visit down there, is that right?

A. That is right.

Q. And the reason you went down there is because war production had stopped in Detroit?

A. The reason we went down there is because the War Labor Board sent for us.

Q. Well, that is the reason they got you down there, is it not?

A. I don't know; I never asked them.

Q. As far as you know; you were just summoned down there to talk to them?

290 A. I can tell you what they said to us after we got there.

Q. What is the policy of the Foreman's Association of America with respect to running the picket line of another union?

A. We have never let anybody's picket line keep our members out of a plant. Our foremen always go in and do their jobs to the best of their ability—our members, I should say.

Q. So the Foreman's Association of America would run a CIO picket line any time?

A. If the Association wasn't in a dispute and it wasn't the foreman's dispute, yes.

Q. You would run it?

A. They would go in and go on their jobs, if that is what you mean.

Q. Have you any assurance, on the other hand, that the CIO would run picket lines of the Foreman's Association of America?

A. As I said before, I was told that they would cross our picket line, any picket line of the foremen.

Q. Is that the way you think the matter rests at the present time?

A. Yes.

Q. Do you feel that you can control strikes better than the CIO has controlled them — strikes of your members?

291 Mr. Nelson: I do not think that is a proper question at all. How about your controlling them, Mr. Donovan, like you have in the past?

Mr. Donovan: If I had some judges who aren't afraid of the cars, I could.

Mr. Nelson: If you could use the cars of the judges to crush workers, of course, you would keep on doing it.

Trial Examiner Jaffee: Objection sustained.

Q. (By Mr. Donovan) Did you give any notice under the War Labor Disputes Act and again under the Michigan

State Statute requiring notice of strikes preceding these April and May strikes of foremen in the Detroit area?

A. No, we didn't know the strikes were going to happen.

Q. What obligations, in general, does a member assume when he becomes a member of the Foreman's Association of America?

A. What obligation to the Association?

Q. Yes.

A. He pays his dues, attends his meetings, lives up to the Constitution; he should believe in the principles of uniomism, and to fight for it.

Q. And he is supposed to attend meetings regularly?

A. He is supposed to, yes.

Q. How regularly do the members of your chapter meet?

A. The Constitution provides that the chapters should meet once a month.

292 Q. Actually, they meet oftener, do they not, than that?

A. They may, and some do.

Q. They did during the strikes in April and May, did they not?

A. Yes, they met every day.

Q. Speaking generally, now, is your Association bound by the action of the majority of the members.

A. No.

Q. If you have a strike and that appears to be the desire or vote of the majority, he is not obliged to join the strike?

A. No, he is not obliged to join the strike.

Q. No pressure or compunction of any kind is put on him?

A. Not from headquarters.

Q. He could stay right in the plant as foreman while the rest of the foremen in that plant went out on strike, as far as your Association is concerned?

A. No.

Q. What machinery is there in your Constitution and your by-laws, if you have any, with reference to strikes? Do you have any provision at all about strikes in your Constitution?

A. Yes, we establish a provision that the chapter must follow if they intend to strike, and that provision is, it provides for votes to be taken by members, strike
293 notices to be filed under the Smith-Connally Act and State laws, and so forth.

Q. Will you find in either of these constitutions the portion you are referring to?

Mr. Nelson: This is the latest one, Mr. Donovan (indicating).

Mr. Donovan: Well, I would like to have it located in the one, or in the ones that have been marked in evidence.

The Witness: You knew it isn't in there, Mr. Donovan. When you are talking about our constitution, we are not just talking about a couple of obsolete contracts; we are talking about the present Constitution.

Q. (By Mr. Donovan) Wait a minute. You say no reference was made in your Constitution with reference to strikes?

Trial Examiner Jaffee: He did not say any such thing.

Mr. Donovan: Mr. Trial Examiner, he has some new constitution—

Trial Examiner Jaffee: (Interposing) It is in evidence.

The Witness: It was introduced.

Mr. Donovan: I do not think we need to get so excited about this. There is no provision for strikes in here. I am entitled to have an answer to my question.

Trial Examiner Jaffee: You are not entitled to an answer when you mis-state the fact. If you will look
294 at Petitioner's Exhibit Number 2, you will find the existing constitution of the Association.

Mr. Donovan: I am entitled to ask questions about other documents than just this one the Trial Examiner has mentioned, and I do wish to ask him a question about Exhibit Number 3 and Exhibit Number 4.

Trial Examiner Jaffee: Will you withdraw your earlier question then?

Mr. Donovan: If the Trial Examiner will tell me what it is, I will.

Trial Examiner Jaffee: I know what it is, Mr. Donovan. Will you withdraw your question?

Mr. Donovan: Well, if the Examiner does not wish to re-state it, I will ask the Reporter to locate it. I think I am within my rights to ask questions about these exhibits.

Trial Examiner Jaffee: Suppose you ask another question, then.

Mr. Donovan: All right.

Q. (By Mr. Donovan) Will you examine Petitioner's Exhibit Number 4 and tell me if you can find any reference there with reference to strikes of any kind, how they are authorized, anything about them. If you find it, read it.

A. No, I can't find any.

Q. What is the date of that constitution, Mr. Keys?

A. November 2nd, 1941.

295 Q. At that time, did you have any by-laws that had any provision with reference to the manner or method of calling strikes, or anything about them?

A. No.

Q. Did you have any by-laws at all?

A. Only this Constitution.

Q. Well, you know when I say by-laws I do not mean Constitution, do you not?

A. I wanted to be sure I understood you.

Q. Are you clear now that I make a distinction between the two?

A. Yes.

Q. I will ask you the same question with reference to Petitioner's Exhibit 3, which appears to be on the face of it, the Constitution adopted at Dearborn Convention, Michigan, and amended at the Dearborn Convention in 1943.

A. I want to be sure I understand you correctly. You are asking me to find the procedure under which members must operate if they wish to strike?

Q. I want to know if there is any provision in there for the calling of a strike, of any kind, how it is called, how it is authorized.

A. No, there is no such provision.

Q. At that time did you have any by-laws which covered it?

A. Let me look again, will you? I think there is
296 something under the Executive Board. Yes, Section 1, Article 15. And this may also be in the same constitution that—

Trial Examiner Jaffee: (Interposing) That covers 1941?

The Witness: Yes, 1941:

"The National Executive Board shall execute the instructions of the Convention and shall be the highest authority of the Association between conventions, subject to the provisions of this Constitution, and shall have the power to authorize strikes, issue charters and punish all subordinate bodies in violation of this constitution."

Q. (By Mr. Donovan) That was in force as of what date?

A. This one was amended at Dearborn, Michigan, at the 1943 Convention.

Q. Was that the one that was in force during April and May, during the time of the strikes in those months, in 1944?

A. Yes.

Q. And was there any action taken pursuant to that provision prior to the strikes?

A. No.

Q. They occurred anyway?

A. Yes.

Q. And you could not control that?

297 A. We didn't know they were going to happen until the men were out on the streets.

Q. Then you could not control the strikes, is that what you want to say?

A. The men were very angry, they didn't want to go back to work and we tried to persuade them to go back.

Q. And your constitution and by-laws were not followed?

A. The Executive Board had not authorized them.

Q. That is right, and yet you had the strikes anyway?

A. We did.

Q. And you had how many going out at the same time—how many going on in how many different plants?

A. I don't know, seven or eight.

Q. And they all happened at or around the same time, in April or May of 1944?

A. That's right; we were very fortunate there weren't 45 or 50. We kept them to a minimum.

Q. But you had enough to get the attention of the War Labor Board, even with seven or eight?

A. Oh, yes, the War Labor Board know all the strikes that are going on all over the country.

Q. All of these plants were making war materials, were they not?

A. To the best of my knowledge, yes.

Q. And it would be just a question of the degree of
298 seriousness, how many plants you struck?

A. We didn't strike any plants.

Q. Well, you had strikes, did you not?

A. Yes.

Q. And those strikes were carried on by members of your Association?

A. They were.

Q. Did the Foreman's Association of America ever lodge a no-strike pledge anywhere at any time?

A. We did not.

Q. You have never taken that action?

A. We did not.

Q. You feel free to strike if you so desire without feeling the pull of a strike not to do so?

A. No one ever asked us for a pledge.

Q. And you never offered one?

A. No.

Mr. Nelson: That goes with recognition, Mr. Donovan.

Mr. Donovan: Mr. Examiner, may we suspend here at this point?

Trial Examiner Jaffee: Very well, we will reconvene tomorrow morning in Judge Moinet's courtroom at nine-thirty.

(Whereupon, at 4:30 o'clock p. m., Tuesday, December 19, 1944, the hearing in the above-entitled matter was adjourned to Wednesday morning, December 20, 1944, at 9:30 o'clock a. m.)

299 Room 737 Federal Building,
Detroit, Michigan,
Wednesday, December 20, 1944.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 A. M.

Before:

Samuel H. Jaffee, Trial Examiner.

301 PROCEEDINGS.

Trial Examiner Jaffee: Gentlemen, the hearing is in order.

ROBERT H. KEYS

resumed the stand, was examined and testified further as follows:

Cross-Examination (Continued).

Q. (By Mr. Donovan) Mr. Keys, do you recall yesterday being questioned about testimony given and statements you had made in the hearing before the War Labor Board Panel in which the Foreman's Association of America was present? Do you recall yesterday that you were asked whether or not in a conversation between you and Mr. Iserman at that time you said to Mr. Iserman, "Don't forget, Mr. Iserman, that we had eight more plants go out of Chrysler Plant—our foremen in Chrysler Plant." Then Mr. Iserman said, "Yes, are you proud of it?" And you said, "No." I asked you if you recalled that testimony and that statement and you said, "No." Is that correct?

A. That is right.

Mr. Nelson: Just a minute. Mr. Examiner, I do not see the relevancy or the materiality of this.

Trial Examiner Jaffee: The answer may remain.

Q. (By Mr. Donovan) Are you still unable to recall that statement you made?

302 A. Yes, as I stated yesterday, I could not recall it but if it was in the record I will not deny it.

Q. And if I now read you the statement you made from the reporter's transcript at the session before the War Labor Board Panel of July 17, 1944, you listen and recall whether or not you recall these questions and these answers and these statements as they are transcribed by the Reporter in the session before the War Labor Board Panel on Monday, July 17? (Reading):

"Mr. Keys: Its significance is the fact that it constitutes a grievance of a foreman.

"Mr. Iserman: Anybody can stay at home nights and write up grievances. I think our problem is to see if they exist. The mere fact that they are written up contributes nothing to this case.

"Mr. Keys: I can only answer, Mr. Iserman, that 1200 of our foremen did not walk out because they were crazy; they have grievances and DeSoto is not the only plant. There were eight others. Do not forget that.

"Mr. Iserman: And you are proud of it?

"Mr. Keys: No, I am not proud of it."

I now ask you, do you recall the statement that I just read?

A. No, I do not recall having made it, but as I said before, if it is in the record, I will not deny that I made it.

303 Q. You do not deny it is a direct statement from your transcript, or rather, from the record of the War Labor Board Panel?

A. I do not know what you are reading, Mr. Donovan. If you will show it to me—

Q. (Interposing) I will be glad to. This is Book 13 of the daily transcript of the hearing of the Foreman's Association of America before the War Labor Board Panel at Detroit, Michigan at the session of July 17, 1944, which reports, by the way, were taken by the same reporter as is taking the present hearing. I believe it is true that you likewise received a daily copy of the transcript, the same as the attorneys for the Company involved, is that true?

A. That is right.

Q. Do you recognize this as Book 13 of the session of July 17, 1944?

A. Yes, that looks like the official report.

Q. Would you care to look at the page upon which the statement appears that I now read to you? Do you accept that as a statement you made?

A. If it is in the record, I do not deny it. That record consists of several thousand pages and there were many days of testimony and I cannot remember what I said and neither could you.

304 Q. I am offering it to you to refresh your recollection. You do not dispute now that this is what I read from page 1701 of the transcript of July 17, which is a statement that you did make on that day before the Panel.

A. No, I do not dispute it.

Q. Now, when you said at that time—when you referred to there being eight others, you referred to at that time eight other Chrysler plants, I take it?

A. I presume so, if I was speaking of Chrysler's.

Q. That is right, and you were speaking of Chrysler's. And those eight strikes were distinct and different from the Foreman's Association strikes in May of this year; that is, they were earlier?

A. They were earlier; that is the only difference.

Q. That is right, they were in January, were they not?

A. I believe so, yes.

Q. Yesterday, Mr. Keys, you made the statement with reference to the profits of the Ford Motor Company and stated, in substance, that they had increased since the contract with the Foreman's Association of America, which, I believe, you said was executed at or around May of 1944. Do you recall that statement?

A. No, I said I thought the profits had increased and that I thought I could prove it.

Q. Well, did you not say that naturally there were more profits after the contract of the Foreman's Associa-

305 tion of America with the Ford Motor Car Company?

A. No, I said naturally there were more profits if

there was better cooperation between the workers and the foremen and more production and more efficiency.

Q. I show you page 123 of the Reporter's transcript of yesterday's proceedings—

Trial Examiner Jaffee: (Interposing) Would that not be the day before? The first day?

Mr. Donovan: I am sorry; December 18. You are correct.

Q. (By Mr. Donovan, continuing) —and ask you to read the answer you gave, starting at the bottom of page 125.

A. "Well, I think that the benefit that the Company has derived from this contract with the Foreman's Association is that it definitely increased the efficiency and increased the production, and, naturally, there were more profits."

Q. That is right. Now, you do recall making that statement, do you not?

A. I said a moment ago I thought so.

Q. Now, what were the profits of the Ford Motor Company for the quarter just preceding the execution of your contract?

A. I don't know.

Q. What were they for the quarter just following
306 the execution of your contract?

A. I don't know.

Q. Did you have in mind profits before Federal Income Taxes or after Federal Income Taxes?

A. After. I read in the newspapers that they had a larger surplus of cash on hand than they had ever had in the history of the Company.

Q. Did you understand "surplus" to mean profits?

A. Yes.

Q. And is it in that sense that you made the statement you did?

A. Partially, yes.

Q. Do you know whether or not any amounts were transferred to surplus from profits for either the years 1943 or 1944?

A. No, I don't.

Q. Did you ever see a balance sheet of the Ford Motor Company?

A. Not the Company's actual records. I have read the statements in the newspapers from time to time.

Q. Were you talking about net profits?

A. I told you a moment ago that I was talking about the fact that I had read, following the signing of our contract, a statement in the paper that they had a larger surplus of cash than they had ever had in the history
307 of the Company, or words to that effect.

Q. Did you have any information when you made that statement as to the facts regarding the surplus account which had occurred either during the six months prior to May, 1944, or after the six months, after May, 1944?

A. Will you read the question again?

(Question read.)

A. No.

Q. Do you know, Mr. Keys—As a matter of fact, do you know, for any month or any period whatever, either the year prior to 1944 or any period of months or quarters subsequent to then, what the profits per share of the Ford Motor Car Company were, or if there were any?

A. I didn't know there was any Ford Motor Company stock. Is there?

Q. I am asking you the question. Your answer, then, was not addressed to any profits for any particular period, I take it?

A. Of course not; there is no Ford Motor Company stock.

Q. That is your understanding of it?

A. That is my understanding.

Q. Now, Mr. Keys, you stated, I believe, that you were in Washington on May 17, before the War Labor Board, did you not?

A. Yes, I believe that is the date we were called
308 down there.

Q. And was General Henry H. Arnold, Chief of the Army Air Forces, present at that hearing?

A. Yes, he was.

Q. Did he state, at that time, in your presence, that he

had a responsibility to the families of the crews that we send over enemy territory?

A. He did.

Q. And did he ask the question:

"What can I say to the crews' families of a bomber shot down over Germany, because it did not have adequate fighter protection?"

A. Yes.

Q. Did he say:

"Our bomber losses are determined by the bomber protection we can afford them"?

A. He did.

Q. And did he say:

"How can I explain to the relatives of crews who are wounded, how can I explain to the families of those killed"?

A. He did; he made similar statements to thos you have read. I don't know if those are his exact words or not.

Q. Are you familiar with the fact that there were Press reports in the Detroit papers of that occasion in Washington?

309 A. Yes.

Q. And if the Detroit Times, on Thursday, May 18, which would be the following day, in an article, on page 2—

Mr. Nelson: (Interposing) I am going to object, Mr. Examiner, to Mr. Donovan spreading this on the record of this case. I think this is just so obviously newspaper trumpery that it ought to be excluded. What do we care what the newspapers think of it?

Trial Examiner Jaffee: I cannot rule on a question that is not finished.

Mr. Nelson: He is obviously preparing now to read from the Detroit Times. I object to it. I object to his reading anything from the Detroit Times. We are not trying this

case from the newspapers, I hope, and who cares what the newspapers think.

Trial Examiner Jaffee: The objection, insofar as it applies to the pending question, or part of the question is overruled.

310 Q. (By Mr. Donovan): In this Article, Mr. Keys, it was stated, and I quote:

"In Detroit, William Vallance, F. A. A. Vice-President, denied the General Arnold appeal had been the principal factor in ending the strike. Vallance claims the Foreman's Association had won a 'behind the scenes' victory for its objectives, and had terminated the strike on this basis."

Is that in accordance with your understanding, Mr. Keys?

Mr. Nelson: I object to that as absolutely irrelevant and immaterial. Mr. Vallance is not a witness and Mr. Keys did not make any part of the statement. It is just a piece of newspaper flamboyancy and I think the Petitioners in this case have a right to be protected from that kind of business on this record.

Trial Examiner Jaffee: My difficulty is that I do not know what the question means or what you are asking the witness, Mr. Donovan.

Mr. Donovan: I am asking the witness to give a little more information on the nature of the organization which is before the Board for certification in this proceeding. In the charter of relevant matters that are going into the record are excluded the nature of the organization involved. That was gone into in great detail by Mr. Nelson and Mr. Keys and I think we are entitled to cross-
311 examine on it. I think we are entitled to test the views of the president of the Foreman's Association of America, that being the labor organization that is the Petitioner here.

Trial Examiner Jaffee: But you have not—

Mr. Donovan (Interposing): If this is not so he can say so and if it is I think we ought to know it.

Trial Examiner Jaffee: I still do not know what you are asking the witness.

Mr. Nelson: In all fairness I do not know what he is asking the witness, either.

Trial Examiner Jaffee: I am addressing my remarks to Mr. Donovan for the moment, Mr. Nelson—Mr. Donovan, are you asking for instance—are you asking the witness whether or not the Vice-President said so or is he assuming that he said so or does the witness agree with it, or what?

Mr. Donovan: I am merely asking him if he knows whether or not Mr. Vallance was directly quoted or correctly quoted, if he knows?

Trial Examiner Jaffee: Is that your question?

Mr. Nelson: I object to it as irrelevant and immaterial.

Trial Examiner Jaffee: Objection is sustained.

Q. (By Mr. Donovan): Mr. Keys, will you state whether or not you agree with the statement in the Detroit Press and the Detroit Times of May 18th where you were
312 quoted as stating that it was not the plea of General H. H. Arnold or that of Rear Admiral Ernest W. Pace that prompted the back-to-work decision, but rather because the Foreman's Association of America felt the War Labor Board was taking a more favorable attitude.

Mr. Nelson: I object to that as irrelevant and immaterial.

Trial Examiner Jaffee: Objection sustained.

Q. (By Mr. Donovan): Is it true that you called the men back to work because the War Labor Board had taken a more favorable attitude?

A. No.

Mr. Nelson: I believe that is irrelevant and immaterial and I ask the answer be stricken with the question.

Trial Examiner Jaffee: Stricken.

Mr. Donovan: The Examiner is preventing me from going into the reasons why the Foreman's Association of America took the action they did with reference to the May strikes?

Trial Examiner Jaffee: I am just ruling on the questions.

Mr. Donovan: You then rule the question out?

Trial Examiner Jaffee: That is right.

Q. (By Mr. Donovan): Now, Mr. Keys, do you recall yesterday that you said, and if I am quoting the substance correctly will you tell me so and if not I will be glad
313 to have you say so—that at the time you left the Ford Motor Company's employment you had a differential of approximately 15 cents as between you and the workers under you? Was that substantially your figure?

A. I said, as I recall it—I offered to get the proofs on it but you do not seem to want them. I cannot recall everything that has happened in the past three years, but that is my recollection, yes.

Q. Was that differential one that existed between you and the average paid worker in your department or between you and the highest paid worker or the lowest paid worker? Which was it?

A. The highest paid, as I recall it.

Q. You had 15 cents—you were receiving 15 cents more per hour than the highest paid workers in your department, is that right?

A. As I recall it, yes.

Q. At that time what was the range of pay of the workers under you in the Ford Motor Company department where you were foreman? What was the lowest paid rate and the highest paid rate?

A. The lowest rate would be, I think—I had some as low as 90 cents and up to $1.40.

Q. You had workers under you getting $1.40?

A. I had workers under me getting $1.55 at the time
314 I left. We are speaking of a little earlier period and I think that is what you are questioning me about.

Q. So that the highest paid worker under you at the time you left was receiving $1.55 an hour?

A. That is right.

Q. What were you receiving?

A. I was getting $1.65 and a nickel for nights.

Q. Well, did you count your 15 cents differential or figure it to include the 10 cents over the $1.55 workers under you and your five-cent night bonus?

A. Yes. I got that. It was money in my pay envelope.

Q. In your opinion, is that a fair differential between the foreman and the workers under him in his department?

A. No.

Q. You think it should be higher?

A. I do.

Q. How much higher than the highest paid worker do you think it should be?

Trial Examiner Jaffee: Hasn't that been covered? I think he indicated that it should not be less than 25 cents and he hopes it would be higher than $1.00.

The Witness: Mr. Examiner, he keeps asking me the same questions over and over again.

Mr. Donovan: I think the Examiner will strike out the questions that are improper and you do not have to worry about that. May I have that last question answered?

315

Trial Examiner Jaffee: Had you forgotten the earlier testimony on the subject?

Mr. Donovan: My next question will not make a great deal of sense until I refresh his recollection on that.

Trial Examiner Jaffee: All right.

The Witness: I said yesterday that I stated I thought it should be at least 25 cents and up to $1.00 for the higher classes of supervision.

Q. (By Mr. Donovan): That is because he is a foreman, isn't it?

A. That is right.

Q. Mr. Keys, when you went down to Cleveland as you testified the other day, or yesterday I guess it was, just who did you see down there connected with the CIO?

A. Well, I saw Mr. Phillip Murray, President, I saw Mr. R. J. Thomas, President of the UAW-CIO, George Addes, Secretary of the UAW-CIO, Walter Reuther, Mr. Tom Groehn, sitting over here.

Q. (By Mr. Donovan): What was the occasion of your going down there to confer with these gentlemen?

A. I wanted to determine for myself that they had no designs in organizing the foremen, and I asked them that.

Q. Did you fear that they had?

A. No, I did not fear that they had, but there had
316 been rumors and I wanted to determine for myself.

Q. Those rumors had come to your attention, hadn't they?

A. That is right.

Q. And you considered it important enough to make a trip to Cleveland to see the top CIO men and discuss that matter?

A. I did.

Q. And that was the only matter you did discuss with them with reference to the Foreman's Association of America, was it?

A. No.

Q. What else did you discuss with them with reference to the Foreman's Association of America?

A. I told them what the attitude of the employers was toward our organizational efforts, and that they eventually were going to result in a foremen's strike and picket line, and they told me that because of their pledge to the President that they would cross our picket lines. I told them that by the same token if their people were on wildcat strikes, we would instruct our men to go in and go on their jobs, regardless of their picket lines.

Q. And that is substantially the correct report of the matters you took up with them, is it?

A. That is right.

Q. Did you discuss the matter of any cooperation
317 between the two Unions at the time of the strike of either?

A. I never asked them for any and they never offered any. Mr. Phillip Murray did say that he certainly held the highest esteem and regards for our organization and that we were doing the right thing and deserved an organization of our own.

Q. Mr. Keys, do you see anything inappropriate in foremen being members of the same Union as the men under them?

A. I have never given a great deal of thought to it and I have never studied the past history of such units or organizations, but basing my opinion on the fact that they

have been in existence for some forty years, my answer would have to be no.

Q. You do not approve, is that it?

A. No. I see no objections.

Q. You see no objections to it?

A. No.

Q. Well, then—

A. Don't misunderstand, Mr. Donovan. I said I am basing that no answer on the fact that they have been in existence for forty years. I know nothing about their organization except what I read.

Q. Nothing about what organization? The CIO?

A. The typographical and the maritime and the rail-
318 road workers where they have mixed units, supervision and employees and workers in the same bargaining unit.

Q. Are you talking about unions not active in the Detroit area?

A. Yes, I am talking about unions active in the United States of America.

Q. Confining the situation for the moment to the Detroit metropolitan area and the CIO, what would you say with respect to that as to the appropriateness of foremen belonging to a CIO Union?

A. I say that it is the jurisdiction of the National Labor Relations Board to decide the appropriateness of any unit. What we may seek or what any other union may seek will be decided by the Board.

Q. Would you rather not give me your own views on that?

A. As I said yesterday, we always figured on remaining an independent union because we thought that we could service our members better that way.

Q. Why do you hesitate to give me a direct answer to my question?

A. What kind of answer do you want, Mr. Donovan?

Q. The answer you gave me is an answer to quite a different question. I asked you whether or not you considered it appropriate for a foreman to become a member of the CIO Union in the Detroit area?

319 A. I can only answer it through my interpretation of the law as it is written.

Q. I am not asking for the law but I am asking for your own personal opinion as to the appropriateness of foremen going into membership with a CIO Union in the metropolitan Detroit area?

A. Appropriateness from what angle? Mr. Donovan, give me a basis to decide whether it is appropriate or not.

Q. Do you know what I mean by membership?

A. Yes.

Q. Do you know what I mean by foremen?

A. I do.

Q. Then do you consider it appropriate for a foreman to become a member of the CIO Union?

A. What basis do you use as a judgment for appropriateness, is it law or appropriateness for the National Labor Relations Board or appropriateness for what reason?

Q. I want your opinion. If you do not want to answer the question, say so.

A. No, I answered it already.

Q. What is your answer?

A. I said give me a basis on which I can make an answer, and I will be glad to answer.

Q. You answer the question upon any different basis
320 or assumptions that are in your own mind.

A. If you are asking me if I think a bargaining unit composed of the two groups would work, I will answer that question, or any direct question, but when you say if it is appropriate or not, you have to give me a basis to answer it on.

Q. You feel you cannot answer it properly as to the appropriate or inappropriateness—

A. (Interposing): As to a general answer, I think it would be approriate. Yes, it would work, in my opinion.

Q. All right. Mr. Keys, speaking rather generally, do you believe that an employer should be held responsible for a foreman's interference with the rank and file workers in the matter of choosing a union or making anti-union statements, and that sort of thing?

A. If he forces the foreman to do it, yes.

Q. If a foreman would say to a worker, for example, "You better not join that CIO because the boss doesn't like it; it is liable to make a difference in your job," do you think management should be held responsible for statements of that type by a foreman?

A. Depending upon whether or not he was told to do so by his employer.

Q. Your answer would be if he was instructed to do that by an employer only in that event would management be responsible?

321 A. I would say management would be responsible in that event, yes.

Trial Examiner Jaffee: And only in that event?

The Witness: I beg your pardon?

Trial Examiner Jaffee: And only in that event?

The Witness: Yes, I would say and only in that event.

Q. (By Mr. Donovan): And that would be true with any other action or conversation or conduct on the part of the foreman that might be interference with a worker within the meaning of the National Labor Relations Act?

Trial Examiner Jaffee: Will you read that question, please?

(Question read.)

Trial Examiner Jaffee: That is a pretty broad question, is it not?

Mr. Donovan: It is rather broad. Would you rather I rephrase it, Mr. Examiner?

Trial Examiner Jaffee: Frankly, I would have difficulty in answering it myself, but if the witness can answer it, all right.

Q. (By Mr. Donovan): Mr. Keys, if a foreman's attitude toward the rank and file CIO workers is such as to constitute interference with his free choice, or rather, their free choice of joining or remaining as members of the Union, speaking generally, would you say that is something management is fairly chargeable with?

322

A. If there is the least interference and he was forced to do it.

Q. And only in such cases as that would management have any responsibility for the actions of foremen?

A. Hasn't the Board in the past drawn its conclusions—

Q. (Interposing) I am asking you.

A. I said if there is the least interference there.

Q. Do you base your answer upon the fact that the National Labor Relations Board has held that a foreman's conversations of a discriminatory or interfering sort are not traceable to management and are not management's responsibility?

A. I don't follow you on that question.

Q. Do you base your answer on what you understand the National Labor Relations Board has held in such cases?

A. I base my answer on the fact that if the Board should find, in its investigation, that there is at least an interference, that the foreman was forced or told to do whatever he did, that was in violation of the act, the employer should be held responsible.

Q. But only in the case of that, in the case you mentioned?

A. I think the Board would hold him responsible if they found that.

323 Q. And you say that is the basis—

A. (Interposing): I think if the foremen are organized or unorganized, I will tell you that.

Q. What do you mean?

A. I mean, it would make a great deal of difference if the foremen were organized or not organized.

Q. Then, it would mean this, it would make a difference whether the foremen were members of the Union or were not members of the Union?

A. It would make a big difference.

Q. What is the big difference in the one case or the other?

A. Well, organized foremen don't permit unfair labor practices, and unorganized foremen are forced to do so.

Q. That is your distinction?

A. I think the organization of foremen is going to be one of the greatest boons to this country in stopping unfair labor practices.

Q. You say, then, if the foremen were organized, the

fact that management will be responsible for what he says or does in the way of interference with workers' rights would be of no importance, because there would be nothing of that sort?

A. I think it would be reduced to a minimum.

Q. So management would not have to worry very
324 much about the actions or conduct of its foremen?

A. I don't know how much they would have to worry.

Q. Well, do you think there would be any difference in the responsibility of management where the foremen were members of the Union, or were not members of the Union?

A. Any difference in their responsibility?

Q. In the management's responsibility, what would be the difference, so far as management's responsibility for its foremen's actions are concerned?

A. Mr. Donovan, I think you are asking a lot of questions that can only be answered by the National Labor Relations Board itself.

Q. If you do not feel able to answer the question, just say so.

Mr. Nelson: That, obviously, is a question of law. I do not know how many questions of law you think this witness should answer correctly.

Mr. Donovan: Are you making an observation or an objection?

Mr. Nelson: I will object to it. You have been questioning him on the law for the last half hour, and he has done fairly well.

Trial Examiner Jaffee: That is a question of opinion, I suppose.

Mr. Nelson: It may be a question of opinion, and
325 I am willing he should go as far as the Trial Examiner sees fit on this.

Trial Examiner Jaffee: I mean, it is a question of opinion as to whether or not the witness has done pretty well so far or not.

Mr. Donovan: I will strike the question. I think the discussion has been illuminating enough for our pur-

poses. If it is troublesome to counsel, I will reframe the question.

Mr. Nelson: Well, it is not that it is troublesome; I think it is a question of law, as I said.

Mr. Donovan: All right, if it is stricken, there can be no quarrel.

Mr. Nelson: No.

Q. (By Mr. Donovan): Mr. Keys, I believe you stated that the series of strikes of the Foreman's Association in the Detroit plants during April and May of this year, 1944, were unauthorized?

A. That's right.

Q. And, by that you mean, they were not inaugurated in accordance with the Constitutional provisions of the Foreman's Association of America?

A. That's right.

Q. Now, your charters that you grant to chapters correspond roughly to charters granted to locals of
326 other unions?

A. I don't know; I haven't seen the charters of other unions.

Q. You do grant charters to locals, do you not?

A. Yes.

Q. And you have introduced some in evidence here?

A. Yes.

Q. And those charters are subject to revocation on occasion for violation of any constitutional provision, are they not?

A. Right.

Q. And members can be disciplined by the Foreman's Association of America, if they so choose, in a proper case, under your Constitution and by-laws, can they not?

A. Right.

Q. Was there any charter revoked or any member disciplined, that you know of, from May 1, 1944, to date, in the Foreman's Association of America?

A. No.

Q. Whatever happened during those strikes had your approval, did it?

A. It didn't have our approval, as far as the men walk-

ing off the job. As far as understanding why they walked off the job, I thoroughly understand it and I think a lot of other people do, and if you would
327 like the reasons, I will give them to you.

Q. I would like to have you answer my questions. Your counsel will let you talk about things like that when he gets you back. Mr. Keys, when a man becomes a member of the Foreman's Association of America, speaking by and large now, he becomes bound by the majority action taken by the Union, does he not?

A. If he is a good union man, yes.

Q. If he is a loyal union man?

A. Yes.

Q. And you like to have loyal union members, do you not?

A. That's right.

Q. And once a man becomes a member, you rather expect he will be loyal, do you not?

A. We do.

Q. If a majority favors a strike and some individual member, in his private opinion, does not favor it, you, nevertheless, expect him to be loyal, to be a loyal union member and go along with the action?

A. I stated yesterday he had no obligation, but if he is a good union man he probably will, yes.

Q. Mr. Keys, have you any familiarity, in a general way, with the contracts in existence in the metropolitan area of Detroit between the UAW-CIO and the large employers?

A. I have read most of them some time or other.

328 Q. Are you familiar—you can say if you are not—with the fact that those contracts, by and large, exclude foremen as direct representatives of management, speaking generally now?

A. Well, the phraseology is not what you quoted, they are excluded, yes.

Q. But you say not as direct representatives of management?

A. Not in all contracts; they are in some.

Q. You do not deny that that is in some of the UAW-CIO contracts?

Trial Examiner Jaffee: You mean, the phrase, "as direct representatives of management"?

Mr. Donovan: That is right.

A. Without refreshing my memory, I will have to say I don't know.

Q. (By Mr. Donovan): I thought you said a minute ago they were in some but not in others?

A. I said they may be in some.

Q. Now, Mr. Keys, you filed a brief here at the conclusion of the War Labor Board Panel, did you not?

A. Yes, our counsel filed a brief.

Q. Well, refreshing your recollection, I will show you a copy of the brief of the Foreman's Association of America which was given to us as a copy, and ask you
329 if you can see your name at the bottom of that brief, with Mr. Nelson's?

A. Yes, I signed it, if that is what you want to know.

Q. And is that the brief of the Foreman's Association that was filed with the War Labor Board Panel who sat in Detroit during the summer on the foremen's case?

A. Yes, it looks like a copy of it.

Q. You identify it as a copy of the brief, the original of which was filed with the Panel?

A. Yes.

Q. In this brief, in the last paragraph, the following statement is contained:

> "As a concrete suggestion, we urge that the recommendation by the Panel to the Board include the matter of a joint committee on grievances in each plant of the managements, consisting of not less than three representatives of the employer and three representatives of the foremen, together with appropriate building and department chairmen and committees."

Now, that is the only concrete suggestion that that brief contained in the way of a request to the Foreman's Panel, was it not?

A. That is the only suggestion about the grievance machine if that is what you mean.

330 Q. Do you not recognize this language as the language of your brief, in the concluding paragraph?

A. Yes, sir.

Q. And the concrete suggestion was the appointment of the Labor-Management Committee, was it not?

A. I don't think it refers to it as Labor-Management Committees.

Q. Well, it was a joint committee composed of representatives of management and representatives of the foremen, was it not?

A. That's right.

Q. You can characterize that as you like, but that is what you said, nevertheless, is it not?

A. You are reading from the brief.

Q. Well, you do not claim I read it incorrectly?

A. You did when you spoke of it as Labor-Management Committee.

Q. No, that was a characterization of it, Mr. Keys, and you do not like that characterization, and you do not think a committee composed partly of management and partly of foremen is such a committee?

A. Yes, I do, I never said that. A committee like that could certainly be described that way.

Q. Why did you ask the Panel for a committee of that type?

331 A. To settle grievances.

Q. But you did not believe in that type of machinery, did you, at that time?

A. Yes, we believe in it. We don't say it is the best in the world, but we believe in it.

Q. You made certain radio addresses in Detroit, did you not, during the year 1944?

A. Yes.

Q. And you made one address on April 20, 1944, did you not?

A. I don't recall it offhand.

Q. Did you not introduce in evidence and supply all counsel with printed copies of your radio addresses made on behalf of the Foreman's Association of America over radio station CKLW?

A. Yes.

Q. You recall that?

A. Yes.

Q. Do you recognize the document that I show you as one such radio address, a printed pamphlet form (indicating)?

A. That is right.

Q. Did you not say in that address—did you not address on that occasion yourself, right after the opening, "Good evening, ladies and gentlemen," on April 20, 1944, as follows:

332 "At that time both the War Production Board and the manufacturers were making a great splurge with the establishment of labor-management committees, but week after week we foremen pointed out the fallacy of depending on such committees to create a new spirit of cooperation. We were the only voice in the country last year that predicted failure of the committee idea. Subsequent events have vindicated our judgment, for what has happened to these committees? The sad fact is that they were a colossal flop, and while they still exist in name in many plants, they long since have ceased to function or serve any useful purpose."

You do not deny you made that statement over the radio?

A. No, I don't deny it; I made that statement.

Q. As a matter of fact, when you filed this brief with the War Labor Board Panel, that was not really what you wanted from the War Labor Board Panel, was it?

Trial Examiner Jaffee: Pardon me, what was the date of the brief?

Mr. Donovan: The brief is undated, but it was filed at the conclusion of the War Labor Board Panel hearing.

Mr. Nelson: I will agree with you on the date, if you like. I would say it was the last week in August, and if you like you can fix it on the last day of August,

333 to give it a specific date.

Mr. Donovan: That is my recollection also, Mr. Nelson.

Trial Examiner Jaffee: Well, you have a difference in dates.

Mr. Donovan: Maybe that is what I was going to ask him, Mr. Examiner. Do I have a question pending?

Mr. Nelson: We agreed on the date for the record, if that is agreeable to the Examiner.

Trial Examiner Jaffee: Yes.

Mr. Donovan: I am asking if there was a question pending.

Trial Examiner Jaffee: If there is a question pending will you please read it?

(Question read.)

The Witness: Yes.

Q. (By Mr. Donovan): Is that still what you want?

A. Yes, we want a grievance committee. I wasn't talking about a grievance committee in that radio talk, though. The people, the public knew it; you should know it. I was talking about joint labor management committees having nothing to do with grievances.

Q. Is it not true at the time you filed this brief, and at the time we were before the War Labor Board Panel, and today, that what you want is collective bargaining
334 and a contract in recognition of the foremen, just like the CIO has it?

A. Yes.

Q. That is what you want?

A. Yes.

Mr. Donovan: That is all.

Mr. Nelson: Could we have our morning recess at this time?

Trial Examiner Jaffee: We will take a five-minute recess.

(Recess taken.)

335 Trial Examiner Jaffee: The hearing is in order.

Q. (By Mr. Donovan) Mr. Keys, I wish to show you a transcript of the Court Reporter's of the session of July 18 before the National War Labor Board Panel, where you were present and conducted the case on behalf of the Foreman's Association of America in Mr. Nelson's absence and ask you if you can identify this as the Reporter's transcript, Book 14 of that session, of which you likewise received a copy.

A. Yes, that looks like the official report.

Q. Will you state whether or not you can recall the fol-

lowing conversation between you and Mr. Iserman at page 1954 in the July 18 session (Reading):

"Mr. Iserman: As pertinent to the discussion that just preceded the recess, I would like to read into the record two paragraphs of a News Story that appeared in the Detroit News on May 19, 1944, in which Mr. Keys, the president of the F. A. A., is quoted:

"'In commenting on the "tremendous gains made for the Association" in the strike, Keys said today:

"'Before the strike, we didn't have a voice anywhere. But in the last two weeks we gained for the foremen the right to appear before the NLRB, the right to protest against discrimination; the right to certify disputes coming under the War Disputes Act;
336 and a contract with the Ford Motor Company.'

"May I ask, Mr. Keys, if that substantially is a correct statement?

"Mr. Keys: Substantially, yes. It is not the exact phraseology."

Do you recall those questions and having made those answers, Mr. Keys?

A. I do.

Q. Isn't it true, Mr. Keys, that since your contract and your dealings with the Ford Motor Company, there were more strikes at Ford's than at any other plant, of foremen?

Trial Examiner Jaffee: You are speaking of the contract signed May 9, 1944?

Mr. Donovan: It was preceded with some arrangements as to classifications prior to that time.

Q. (By Mr. Donovan) Mr. Keys, isn't that a fact?

A. Are you referring to the May 9, 1944 contract?

Q. Since the time of your first arrangement with the Ford Motor Company, something less than a contract, which you described as an agreement with respect to classifications and so forth.

A. Yes, there had been more strikes but of shorter duration.

Q. Isn't it true the Ford Motor Company is the place where you had the greatest success in organizational
337 efforts on behalf of the Foreman's Association of America?

A. No, not with organization efforts. We have Packard organized one hundred percent while Ford is not organized one hundred percent. We have obtained a contract from Ford, if that is what you mean.

Q. That is right. At that time, prior to the United Stove Company, that little company, that is the only contract you have been able to obtain from a Detroit employer, isn't it?

A. That is right.

Q. You received the greatest concessions from the Ford Motor Company as compared with any other motor company, did you not?

A. We have.

Q. Now, this radio talk which I called your attention to a few minutes ago, was one of a series extending over a period of months in 1944, was it not?

A. Yes, I think I made 39 of them altogether.

Mr. Donovan: That is all, I think, at the present time.

Redirect Examination.

Q. (By Mr. Nelson) Mr. Keys, in connection with the Ford situation, isn't it a fact that the supervision at the Ford Motor Car Company is in somewhat of a different situation than that in other factories?

338 A. Yes, the structure of the layout—is that what you have reference to?

Q. Yes, the structure of it is different and generally speaking, the ratio of supervision to maintenance and production workers is higher, isn't it, at Ford's?

A. Well, by higher—

Mr. Dahling: I do not quite understand that question.

The Witness: I do not understand it either.

Q. (By Mr. Nelson) To put if in a different form, there is more supervision at Ford's, generally speaking, than in other factories?

A. Yes.

Q. And there is a greater need for supervision in the factory and the way it is run?

A. In my opinion, yes.

Q. And that is your experience too?

A. Yes.

Q. And that is your information from other plants as you have been president of the Association?

A. That is right.

Q. In other words, to some extent, the Ford situation is a special situation, is that right?

A. Yes.

Q. But in fact, does it involve the principles in substance that you find in other factories?

339 A. Yes.

Q. And the same relative circumstances so far as supervisors are concerned?

A. Yes.

Q. Mr. Keys, following the Maryland Drydock decision, did you take part in the filing of an unfair labor practice petition at the Soss Manufacturing and the Republic Steel Company on behalf of the chapters of the Association?

A. I filed them previous to the Maryland Drydock decision and upon their dismissal by the Regional Office, I appealed to the National Board in Washington following the Maryland Drydock case.

Q. They were finally disposed of after the Maryland Drydock decision?

A. Yes, the Board had a hearing in Washington on either January or February 15, 1944.

Q. And sustained its own power to entertain unfair labor practice petitions on behalf of foremen?

A. The decision of the Board was that foremen are employees within the meaning of the Act and it is an unfair labor practice to discriminate against them because of their union activities.

Q. And that decision followed the Maryland Drydock decision?

A. Yes.

340 Q. Of course, the Maryland Drydock decision was a two to one decision?

A. That is right.

Q. That was known to you?

A. That is right.

Q. And there was, what we think, is a very cogent dissenting opinion in that case?

A. Yes.

Trial Examiner Jaffee: The Soss decision was also two to one, wasn't it?

The Witness: No, unless I am mistaken, the Soss case was a unanimous decision.

Trial Examiner Jaffee: Yes, that was a special concurrence.

Mr. Nelson: I believe the Examiner is correct. It was not a dissenting opinion so far as sustaining the power of the Board is concerned. Mr. Keys, you understood the power of the Soss and read the publication that in those decisions it was unanimous?

Mr. Donovan: I have no objections to counsel discussing legal matters with the witness although he did not like me to do it.

Mr. Nelson: I allowed you to do it, Mr. Donovan, except when you got down to legal responsibilities. Then I thought you got down beyond the witness' possible depth.

341 Q. (By Mr. Nelson) Mr. Keys, to put it colloquially, ever since the Maryland Drydock decision, your counsel and you and the representatives of the Association have been needling the responsible parties just as far as we dared about the Maryland Drydock case?

A. Yes, I talked with them at every opportunity I had on the subject.

Q. And you made it perfectly clear that you intended to change that decision when the facts were available to do so?

A. Yes.

Q. And that is your effort in this case?

A. It is.

Q. Coming now to the Briggs matter on which Mr. Donovan questioned you yesterday, were there certain advancements by the Briggs Manufacturing Company immediately

prior to or during the strike affecting the supervisory force?

A. Yes.

Q. What were they?

A. Well, the Briggs Manufacturing Company advanced to position of assistant superintendent, a number of foremen during the strike and I think some since. Our investigation discloses that these advancements were given to men who did not participate in the strike and who crossed the picket line and went into work and so forth.

342 Mr. Dahling: Mr. Examiner, I move the answer be stricken. It is irrelevant and immaterial as to what might have happened in the Briggs plant. That apparently is one of their grievances and in this proceeding has no place. There is no place for that sort of testimony in this proceeding.

Mr. Nelson: May I respond to that, Mr. Examiner? To remind you that yesterday Mr. Donovan went at great length into what happened, as he claimed, at the Briggs and I expect to be very brief about this.

Trial Examiner Jaffee: I cannot for the moment see the relevancy of the particular question and answer.

Mr. Nelson: The advancement of men under false designation is a matter of great importance to the foremen, Mr. Examiner, and particularly when it takes place as a strike measure—

Mr. Dahling: (Interposing) I am sorry, I did not mean to interrupt you. I thought you were through.

Mr. Nelson: No, I am not. I expect to show a presently subsisting dispute and difference growing out of that situation.

Mr. Dahling: I make the same objection.

Trial Examiner Jaffee: I gather from what you last said, Mr. Nelson, that you had more questions along the latter line?

343 Mr. Nelson: I want to follow it out and complete the showing with respect to advancement of foremen to designations of superintendent and assistant superintendent during the strike and then the aftermath of doing so. That is my purpose.

Trial Examiner Jaffee: The answer may remain as a basis for further questions. I will overrule the objection for the time being. It may be renewed later.

Q. (By Mr. Nelson) You may answer the question, Mr. Keys.

A. Well, as I explained how they had been advanced to the positions of assistant superintendent.

Q. And their previous rank was what?

A. Foremen.

Q. Now, do you have a presently subsisting dispute and difference relating to those men who were advanced by the Briggs Manufacturing Company during that strike?

A. Yes, we do.

Mr. Dahling: I object again, Mr. Examiner. In this proceeding we are not dealing with grievances that the particular union may have. We are dealing with the problem of whether or not these foremen are an appropriate unit and following, whether they should have collective bargaining. I call your attention again, Mr. Examiner,

344 to the fact that for months of this year at the hearing before the War Labor Board, the Foreman's Association of America went into that matter of grievances trying to show that they have grievances. They were very unsuccessful, in our opinion. If we are going to have this hearing develop into that sort of a hearing, it will go on indefinitely because we must have the right, if they bring these things up, these grievances, to introduce testimony to show that they do not exist and that they have no substance. If we are going into Briggs where they may have a grievance and bring that up and if you are going into the other companies where they may have a grievance, we will have to bring the testimony in from other companies for the same purpose. I think we are going too far afield.

Mr. Nelson: On the issue of an appropriate bargaining unit, Mr. Donovan brought out very carefully yesterday the line of demarkation and the witness testified as to that and he said in substance that where the designations were a false designation for a particular purpose, then his answer would have been qualified in certain respects and

he gave a series of answers to Mr. Donovan's questions. This bears directly on what Mr. Donovan brought out with respect to the Briggs strike and an appropriate bargaining unit and other things. I assume Mr. Donovan had some purpose in questioning about that strike and I accused him on the record of looking for publicity in the
345 newspapers. If he has a serious purpose which relates to the fixing of the appropriate bargaining unit, then this question is directed to that end.

Trial Examiner Jaffee: Have you completed your questioning on that point?

Mr. Nelson: I have one more question after this one.

Mr. Dahling: Mr. Examiner, may I suggest that the petition discloses in paragraph 5, "The alleged appropriate bargaining unit includes employees classified as assistant foremen, foremen, general foremen, and employees classified as foremen who are referred to as special assignment employees." That is the unit we are talking about here. We are not talking about assistant superintendents and the Briggs Manufacturing Company. If there is any argument about who would fall in these classifications set forth in paragraph 5 of the petition, it would be an argument with respect to Packard supervision, and not Briggs.

Mr. Nelson: The same principle would apply.

Trial Examiner Jaffee: The witness may answer. The objection may be renewed when counsel has completed his examination on the Briggs situation.

Q. (By Mr. Nelson) Do you have a present dispute relating to those foremen at Briggs that were referred to by Mr. Donovan yesterday as assistant superintendent and superintendent? Is that correct, you do have such a dispute?

346 A. Yes.

Q. Now, just two more questions. Are those the men to whom he referred as sleeping in the plant during the strike?

A. Yes.

Q. What is the dispute?

Trial Examiner Jaffee: Briefly.

Mr. Nelson: Yes, briefly.

Mr. Dahling: Mr. Examiner, do I understand that my objections go to all of these questions?

Trial Examiner Jaffee: Yes.

The Witness: They created too many assistant superintendents in that manner. They are now removing all the general foremen and putting them back as foremen; removing the foremen and putting them back into the rank and file as workers and placing these so-called assistant superintendents on the general foremen's jobs and still continuing to call them assistant superintendents and presumably paying them more than they have paid their general foremen for doing the same work they are now doing.

Mr. Donovan: I will ask that the answer be stricken as to presumably paying this or that.

Mr. Nelson: I have no objection to having that stricken out.

Trial Examiner Jaffee: So much of the answer which follows the word "presumably" is stricken. The
347 rest may stay.

Q. (By Mr. Nelson) The so-called assistant superintendent and superintendents with functions heretofore performed by foremen and assistant foremen—those foremen and assistant foremen were members of this Association and were now demoted for that purpose?

A. That is right.

Mr. Donovan: I have an objection to the last question and ask that it be stricken. It is too general to have any meaning and it should not go on the record here against Briggs or any other employer, unaccompanied by any definite statement of facts as to any individual superintendent, assistant superintendent or foreman. It is unrelated to any date in time whatsoever and it is unrelated to any plant. In the form that it is, I think that it is highly objectionable and it should be stricken. Counsel should be asked to adduce testimony in the proper way if he decides to develop the factual end he is evidently seeking here.

Trial Examiner Jaffee: This last evidence as to the situ-

ation at Briggs may remain for the limited purpose of indicating the nature of the dispute and not as independent evidence as to the truth of any particular contention in that dispute.

Mr. Nelson: We are contented with that ruling. We offered it, as stated previously, I think—that is a
348 fair ruling and we are contented with it.

Mr. Dahling: Mr. Examiner, again I ask that it be stricken in entirety as bringing in matters which are irrelevant and if which not answered by the Company in this case, may have an effect upon the decision.

The mere fact that they are admitted for the purpose of showing that there is a dispute does not take away the sting that might be placed upon the testimony—upon testimony of this character. That a company, not in this proceeding, has been demoting general foremen back to foremen and upgrading other people, with the implied claim that that is being done because of union activities or non-union activities.

Trial Examiner Jaffee: I do not see how it is at all relevant. Whether or not there is any sting—I assume depends upon whether or not the fact-finding tribunal goes beyond by ruling. I have limited it. My ruling as I have indicated, places a limitation which is of a nature which any preliminary fact finder may make. That in turn creates a danger inherent in all trials, I presume. Such experience as I have indicates that it is a danger which is sometimes overemphasized. I think since I have specifically indicated the limitations on the testimony the ruling ought to stand. If the Board should go beyond me, I assume you will have just cause to complain.

349 Mr. Donovan: I think if it is allowed to stand, it should definitely appear that it is nothing more than a claim and an unproved claim by the Foreman's Association of America. It is a mere statement which they have made. It is a claim with no statement of fact to support the claim.

Trial Examiner Jaffee: (Interposing) I will let it stand for the limited purpose I have already indicated.

Q. (By Mr. Nelson) Mr. Keys, on inquir of Mr. Dono-

van this morning, you gave some testimony relating to the function of a foreman in an unfair labor practice matter. That is, assuming in substance, that a foreman assumed to oppose the affiliations of a worker under his supervision with the union of his choice. You used the word "told"—told whether the foreman was told by the employer to do this or not. I want to inquire whether you would include in the same category a foreman who took that step where the policies of the employer had been made known or was quite clear to the workers in the shop and the public or either one of them.

A. Yes, where the policies of the employers are such that it is known to the community and the public, I definitely would include that, yes.

Q. Let me ask you whether, up to the present time in the history of the Foreman's Association of Amer-
350 ica, that it has been brought to your attention, that there has ever been a case of complaint by a maintenance and production worker of unfair labor practices wherein the foreman was involved, that is, up to the present time.

A. No.

Q. In other words, up to now there has never been a complaint by any maintenance or production worker that a foreman had taken steps that could be described as unfair labor practices within the meaning of the Wagner Act?

A. So far as the membership of our Association is concerned—

Q. (Interposing) Yes, so far as the membership of the Foreman's Association of America is concerned, that is a true statement, isn't it?

A. We have had not a single complaint.

Q. You said something yesterday about a Wage and Classification agreement entered into in 1942 with the Ford Motor Company.

A. Yes, November 5, 1942.

Mr. Nelson: I ask the Reporter to mark this as Exhibit —Petitioner's Exhibit 12.

(Thereupon the document above referred to was marked Petitioner's Exhibit No. 12 for identification.)

Q. (By Mr. Nelson) Mr. Keys, my recollection is
351 that you said it was the first agreement between the Association and the Ford Motor Car Company.

A. Yes.

Q. I show you Petitioner's Exhibit 12 for identification and ask you if that is a true copy of the Wage and Classification Agreement.

A. Yes, that is a true copy.

Mr. Nelson: I offer the contract in evidence and I offer a copy to the attorney for the Board and the Company and I offer the original to the Trial Examiner.

Mr. Dahling: Mr. Examiner, we object to the admission of Exhibit 12 into evidence on the ground that it is an agreement that relates to matters between the Ford Motor Company and the Foreman's Association of America. There has been no showing that the condition in that Company is the same as the condition in the Packard Company and it is, therefore, without weight in this proceeding and should not be received.

Trial Examiner Jaffee: It is received.

(The document heretofore marked Petitioner's Exhibit No. 12 for identification was received in evidence.)

Q. (By Mr. Nelson) You also said that following that, there was an agreement entered into between the Association and the Ford Motor Company preliminary to a further agreement?

352 A. Yes, we signed an agreement agreeing to negotiate a contract.

Mr. Nelson: I ask the Reporter to mark this exhibit 13.

(Thereupon the document above referred to was marked Petitioner's Exhibit No. 13 for identification.)

Q. (By Mr. Nelson) And Exhibit 13 is that agreement and the original of the agreement is available for inspection, is it not?

A. Yes.

Mr. Nelson: I offer the exhibit in evidence. I offer copies to the attorney for the Board and to Packard Motor Company counsel and the exhibit itself I offer to the Examiner.

Mr. Karasick: No objection.

Mr. Dahling: Mr. Examiner, without repeating it again,

I make objection to the admission of this document marked for identification as number 13, the same objection that I made with respect to Exhibit Number 12.

Trial Examiner Jaffee: It is received.

(The document heretofore marked Petitioner's Exhibit No. 13 for identification was received in evidence.)

Q. (By Mr. Nelson) I think further on cross examination yesterday you stated that the presently effective agreement between the Association and the Ford Chapter,
353 of the Ford Motor Company, had been submitted to the War Labor Board jointly by the Company and the Association for its approval, is that correct?

A. I don't recall whether I said jointly or not. It had been submitted and had been approved, yes.

Q. And it was submitted in writing?

A. Yes.

Mr. Nelson: I ask the Reporter to mark this as Petitioner's Exhibit Number 14; it is an eleven-page document.

(The document above referred to was marked for identification as Petitioner's Exhibit No. 14.)

The Witness: Mr. Nelson, to clarify my statement of a moment ago, the War Labor Board held a hearing at which the Company and the Association appeared personally.

Q. (By Mr. Nelson) In addition to this written submission?

A. In addition to it, yes.

Q. I will make the showing on the written submission and ask you if Exhibit 14 is a copy of the letter of transmittal jointly by the Company and the Association to the War Labor Board, and whether the original is available for inspection?

A. Yes, I signed that on behalf of the Association.

Q. And the Company signed it on behalf of the Company?

A. Yes.

354 Q. And it was submitted?

A. That is right.

Mr. Nelson: I offer this in evidence. I offer a copy to counsel for the Board and a copy to counsel for the Packard Motor Company and the original to the Examiner.

Mr. Donovan: Mr. Trial Examiner, I would like to ask counsel if what has been referred to as a submission to the War Labor Board was a case or a pending matter before the War Labor Board which received a number, or was this merely an informal report to the War Labor Board of the proposed contract submitted in letter form?

Mr. Nelson: There was a proceeding before the War Labor Board. You have the number there.

Mr. Donovan: I would like to have that number and the date of the case and the directive issued, if any, by the War Labor Board with respect to this contract.

Mr. Nelson: If you will be a little patient, I still have some more papers to submit. I think the latter part of your request will be complied with.

Mr. Donovan: How about the number?

Mr. Nelson: We have here a case number 30-1444 on a communication from the National War Labor Board that is marked, "Second Ruling of the Board." I believe that is the correct number and that document will be offered just as soon as we can chronologically get to it.

355 Mr. Donovan: What is the number, please?

Mr. Nelson: They mark it "No. 30-1444."

Mr. Donovan: What was the title of the proceeding?

Mr. Nelson: Well, on that paper, it is entitled, "National War Labor Board, Region XI, Detroit, 26, Michigan, in the matter of Ford Motor Company and Foreman's Association of America, Ford Chapter Number 1," and it is accompanied by that case number as given.

Mr. Donovan: Do I understand that counsel is introducing the document he has just talked about?

Mr. Nelson: It will come in its chronological order, and I will offer it in evidence.

Trial Examiner Jaffee: I assume it is objected to, similar to the objection offered to Petitioner's Exhibit 14?

Mr. Dahling: Yes, Mr. Trial Examiner, it appears to be nothing more nor less than a request for approval of a rate change to be put in effect in the Ford Motor Company. We consider it incompetent and irrelevant and having no bearing on the issues in this proceeding.

Trial Examiner Jaffee: Same ruling. Proceed.

Q. (By Mr. Nelson) Was there a ruling of the National War Labor Board received following the submission of Exhibit Number 14, Mr. Keys?

A. And following a hearing.

356 Q. And following a hearing; that is, the Company and the Association went to the War Labor Board?

A. Yes.

Q. And reported personally and orally to the Board on the matter, is that right?

A. Well, they requested that we come over there for a hearing.

Q. And you did so?

A. And representatives of the Association and representatives of the Company appeared before the Panel, and following that appearance we received approval of our contract in its entirety.

Mr. Nelson: I ask the Reporter to mark this letter from the National War Labor Board, dated October 28, 1944, and the accompanying paper, as Petitioner's Exhibit Number 15.

(Thereupon the document above referred to was marked Petitioner's Exhibit No. 15 for identification.)

Q. (By Mr. Nelson) Did you receive in due course from the National War Labor Board the letter of enclosure which I have caused to be marked Petitioner's Exhibit 15, together with the paper attached thereto?

A. Yes, this was their first notice to me.

Mr. Nelson: The letter is dated October 28, 1944 and the accompanying petition is designated, "First Ruling

357 of the Board," bearing the date October 28, 1944, and the case number is number 30-1444, and I offer it in evidence. I offer a copy to counsel for the Board, a copy to counsel for the Packard Motor and the original to the Examiner.

Mr. Dahling: Mr. Examiner, we have the same objection. It appears now that this is nothing more than an application for a wage adjustment, which, apparently, was granted by the War Labor Board. Certainly, it has no relevancy in this proceeding.

Trial Examiner Jaffee: Received.

(The document heretofore marked Petitioner's Exhibit No. 15 for identification was received in evidence.)

Q. (By Mr. Nelson) You received a second communication from the National War Labor Board, did you, Mr. Keys?

A. Yes, they had made a reservation in their first decision.

Q. Covering paragraph 18?

A. Covering paragraph 18 of our contract, because it was something that was new to them in the way of contractual provisions and they wanted time to study it.

Mr. Nelson: I ask the Reporter to mark the letter dated November 16, 1944, and the letter dated November 14, 1944, and the accompanying paper marked, "Second Ruling of the Board," as Petitioner's Exhibit Number 16.

(Thereupon the document above referred to was marked Petitioner's Exhibit No. 16 for identification.)

358 Q. (By Mr. Nelson) I ask you, Mr. Keys, if this is that second communication you received, that you referred to, and if the original is available for inspection? (Indicating.)

A. Yes.

Mr. Nelson: I offer the exhibit in evidence, a copy to counsel for the Board, a copy to counsel for Packard Motor and the original to the Examiner.

Q. (By Mr. Nelson) Mr. Keys, just a word of explanation about this. You said the Board had reserved its ruling on paragraph 18 of the contract, is that right?

A. That's right.

Q. After the hearing it had reserved its ruling?

A. Yes.

Q. Then, in the second ruling of the Board on November 14, 1944, it referred to paragraph 15?

A. Yes, but that was an error.

Q. Yes, that was an error, and that error is corrected in the letter of November 16, 1944?

A. That is right.

Q. When it was called to their attention?

A. That is right.

Mr. Dahling: Same objection, Mr. Examiner.

Mr. Nelson: There is nothing further of this witness at this time. We offer him for further cross-examination, if desired.

359 Trial Examiner Jaffee: Petitioner's Exhibit Number 16 is received.

(The document heretofore marked Petitioner's Exhibit No. 16 for identification was received in evidence.)

Cross-Examination.

Q. (By Mr. Karasick) Mr. Keys, there are several matters I am not sure that the record clearly reflects about which I would like to ask you.

A. All right, sir.

Q. I believe you testified that subsequent to the signing of the Ford agreement in May, 1944, and up to the present time, there have been other supplemental agreements entered into between the Ford Motor Company and the Foreman's Association, is that correct?

A. That is true.

Q. Two supplemental agreements, were there?

A. Two have been signed and they are negotiating on one at present.

Q. I see. Can you just tell us briefly what matters are covered by these two supplemental agreements?

A. I was not a member of the negotiating committee that negotiated them, and I probably couldn't give you that information as well as a member of the committee. I have copies of them if you wish to see them.

360 Q. All I am interested in knowing is what, in general, did those supplemental agreements deal with?

A. Well, our contract provided, under Section 23, I believe, that old grievances that had been—that had not been settled to the satisfaction of a foreman-member of our organization under the old Wage and Classification agreement could be written up as a grievance and processed and there were quite a number of them. As a matter of fact, I think it ran into three or four hundred throughout the entire Ford industry. So one of the supplemental agreements was to establish a date line for accepting them and for meeting to pass upon them, or to dispose of them by the Association and the Company.

Q. So that one matter, then, was a change in the method of handling the grievance machinery under the contract?

A. Under one article of the contract—old grievances originating from the original agreement of 1942.

Q. And was that the sole matter covered in one supplemental agreement?

A. Yes.

Q. What was, just generally, the subject matter or matters covered by the second supplemental agreement?

A. In order to give you a correct answer on that, I would like permission to ask one of the members of the committee; he is sitting right there. You see, I
361 was not in on one of those negotiations at all.

Q. You have no personal knowledge, then, of the matter covered by the second supplemental agreement?

Trial Examiner Jaffee: First or second?

Mr. Karasick: Second.

The Witness: The first and second agreements have been submitted to me. I have read them but it has been quite some time back, and I am not too familiar with the contents.

Mr. Karasick: Very well.

Mr. Donovan: Does this still relate to the Ford Motor Company; that is, the supplemental agreements?

Mr. Karasick: That is correct.

Mr. Nelson: I would volunteer a bit of information here. The second one relates to misclassification of foremen, and there is one signed in the last two days relating to seniority, making the third supplemental agreement arrived at. This last one is so recent we do not have a copy of it.

The Witness: That is true.

Q. (By Mr. Karasick) With that statement of counsel, does that refresh your recollection as to the subject matter covered by each of the supplemental agreements?

A. I would rather not try to answer that, to describe the subject matters of those agreements personally,
362 because I wasn't in on the negotiations.

Q. Very well. I believe you testified, Mr. Keys, that there were no geographical limitations placed by the

Association on chapters which were chartered by the Association.

A. Yes.

Q. Now, did you mean by that, that a chapter could exist in any part of the country, or did you instead mean a chapter would have jurisdiction over any geographical area irrespective of how large it might be?

A. I meant it could exist in any part of the country.

Q. Is the jurisdiction of a chapter chartered by the Association in each case defined to geographical area covered by the chapter?

A. No, just the plants covered by the chapter.

Q. So, in that respect, then, the jurisdiction is defined, is that correct?

A. That is true.

Q. Yesterday you stated that in the consent election which was conducted in case number 7-R-1279, involving the foremen employed at the Packard Motor Company, there were 130 challenged ballots?

A. That is the figure that I stated.

Q. Now, what was the reason for the challenge and who challenged them?

363 Mr. Dahling: Just a minute, please. Does this have any relevancy at all, about some prior petition that is not before the Board now? This proceeding, if it proceeds as expected by the Association, will result, presumably, in an election at some future date. I can see no relevancy whatever to some past election which is not at all an issue here, nor whether or not the votes were challenged in that election.

Mr. Karasick: I might only say, Mr. Examiner, that I am not interested in eliciting any fact that is not relevant to this proceeding. My duty is to get a full and intelligent record for the Board. But the question of the Packard consent election has been gone into previously in this proceeding. Mr. Donovan himself has asked questions at great length about it?

Mr. Donovan: I did not ask any questions about it.

Mr. Karasick: Then I am mistaken. The record will determine that.

I do think since there is some question about the matter, it should be clarified for the convenience of the Board.

Trial Examiner Jaffee: Do you claim the figure is wrong, or what?

Mr. Karasick: No, I merely wanted to know what the basis was for the challenge, but if the Examiner
364 feels that it is not material, I am perfectly willing to drop it.

Trial Examiner Jaffee: I think we have enough on it.

Mr. Karasick: Very well, I withdraw the question.

Trial Examiner Jaffee: Are there any further questions of the witness?

Mr. Karasick: Yes, just a moment, please.

Q. (By Mr. Karasick) I believe you also testified, Mr. Keys, that after the consent election I have been referring to, you received only the election results from the Regional Office of the Board, is that correct?

A. Yes, I received a document showing the results of the election.

Q. I hand you Board Exhibit Number 19, and ask you if that is the document you referred to when you said you had received a copy of the election results?

Mr. Dahling: Just a moment, witness. Mr. Examiner, we, of course, objected to the introduction of that exhibit, and without repeating it, we make the same objection to this whole line of testimony.

Mr. Karasick: Since the matter has been gone into, I think it should be gone into with clarity. The witness has testified he received a copy of the election results only. I want to know whether the witness received a copy of the report on the consent election which was sent out by the Regional Director.

365 Trial Examiner Jaffee: Mr. Dahling is merely preserving his objection. He may answer.

Mr. Dahling: Yes, Mr. Examiner.

The Witness: All right.

Q. (By Mr. Karasick) That is what you meant by saying you received the election results?

A. Yes, I referred to that yesterday in my testimony as the certification of the election results. That is the document I had in mind.

Q. Now, both Mr. Donovan and Mr. Nelson questioned you with respect to the responsibility of Management for foremen's activities concerning the possible commission of unfair labor practices, and you answered their questions. Your answers to those questions were your understanding of what the Board decisions held in cases involving such questions?

A. Yes. Of course, I was giving my opinion only.

Q. I see. That was your understanding, is that it?

A. Well, I have read Board decisions; I am not too familiar with them, but that was my understanding, yes.

Q. In formulating policies or in giving advice to members of the Association with respect to their duties and responsibilities concerning Management under the decisions of this Board, do you consult legal counsel and get legal advice as to specific situations and as to gen-

366 eral problems concerning those matters?

Trial Examiner Jaffee: I may say, Mr. Karasick, that I had not thought Mr. Donovan was asking these so-called legal questions, to begin with, merely to get legal information.

Mr. Karasick: Nor am I, Mr. Examiner.

Trial Examiner Jaffee: But as questions having some bearing on the opinion expressed by the witness.

Mr. Karasick: I am trying to find out the basis for that opinion. I think the Board should know it.

Q. (By Mr. Karasick) Do you understand my last question, Mr. Keys?

A. On any matter that comes to my attention, as President of the Foreman's Association of America, pertaining to the law, I consult with Mr. Nelson, our counsel. I refer it to him and if there is any type of action to be taken, so on and so forth, he advises me.

Q. Your opinion concerning the situation we are now talking about, was that an expression of your opinion as to what the decisions of the Board are and have been?

A. That's the way I understood it, yes.

Q. You were asked whether or not the Foreman's Association approved of certain strikes which have taken place

in this area, and you said they had not; that the
367 Foreman's Association of America, nevertheless, had not disciplined its members for participating in such strikes. Is there any reason for that?

A. Yes, there is a definite reason. We were warned and asked by the membership to permit them to strike. We still have such requests. There is hardly a day that goes by but what we get a request for permission to strike from one of our chapters, and we have withheld that permission. When the situation got out of hand, when they felt they had to strike to protect themselves and preserve their jobs and so forth, and they did strike, we haven't disciplined them in any manner, although we have provided in our constitution stricter regulations governing strikes. We have made the procedure quite lengthy and the chapters must follow it if they wish to participate in a strike.

Q. Are you acquainted with the general functioning of labor-management committees throughout the country that were set up under, I think, the War Production Board Program?

A. Yes, I made quite an investigation of them at one time. I thought they were going to be very good originally.

Q. Do those labor-management committees have any power to handle grievances or deal with matters relating to collective bargaining?

A. No, they were not established for the purposes of
368 settling grievances.

Q. Were they production committees, mainly?

A. To increase production in the plants, yes.

Q. In your radio addresses, were you referring to labor-management committees, as such committees, or labor-management committees that might be composed of grievance committees composed of equal numbers of representatives of Management and equal numbers of representatives of Unions?

A. I was referring to labor-management committees whose only purpose was to increase production.

Q. From May, 1944, up to the present time, have there

been any more or have there been less strikes involving—or disputes or disturbances—involving foremen at the Ford Motor Company than for a similar period prior to that time?

Mr. Donovan: Prior to what time?

Mr. Karasick: May 4, 1944, prior to the contract.

Mr. Dahling: You mean, for a similar period of months—October, November, December—approximately three and one-half months?

Mr. Karasick: I mean, for the period from May, 1944, when the contract was signed at the Ford Motor Company, up to the present time, have there been more or less labor disturbances than there were for a similar period prior to that?

Trial Examiner Jaffee: What do you mean by "similar period"? Do you mean the same number of months just prior?

369

Mr. Karasick: That is right.

Mr. Donovan: That has all been gone over, the strikes, the number of men participating, and so forth.

Mr. Karasick: I may suggest, Mr. Examiner, the very reason I am doing this is to make a complete picture. Mr. Donovan, himself, asked for a period from the Wage Classification Agreement up to the present time. I want to see if that picture holds true throughout the period, and I am merely breaking it down now. I am asking about the general picture.

Trial Examiner Jaffee: All right, go ahead.

A. In my opinion, in my testimony, rather, I gave the dates and described all the strikes I am familiar with. Since May 9, 1944, the day on which we signed the present contract, there have been two brief strikes that I described, and one protest that we didn't consider as a strike. In the same period, before May 9—well, there were only three strikes before the signing of the May 9 contract, and I don't know whether that would fall in that period or not without checking. They were strikes, and large numbers of men were involved and they lasted longer.

Mr. Karasick: No further questions.

Mr. Nelson: I have a couple questions.

Redirect Examination.

370 Q. (By Mr. Nelson) Mr. Keys, there has been one subject matter here of interest that I think none of us have touched, and I may preface my question by reminding you that your testimony is that there are four grades of foremen involved at the Packard Motor Car Company, is that right?

A. Yes.

Q. And there are six included, as shown on page 25 of the agreement with the Ford Motor Company, four grades of foremen involved in the agreement or covered by the agreement with the Ford Motor Company, is that right?

A. Well, it's broader than that. There are six classifications of foremen. Then, in the fire department, you have the lieutenants up to the assistant chiefs, included. Then we have the Marine group, which are mates and pilots. So, in reality, we have about ten or more classifications of foremen in the Ford Motor Company included in the unit.

Q. In the main, however, you have the six classifications?

A. The big bulk is in those six.

Q. And is it a fact you may have all six of these classifications in one building?

A. Yes.

Q. And you frequently do have?

A. Yes.

Q. I want to inquire, in general, of course, whether your experience in the Ford Chapter—and you may in-

371 clude both the period before and after the making of the contract—has brought you any difficulty in dealing within the Association with a classification as broad as that or as numerous as that?

Mr. Dahling: Mr. Examiner, I would like, again, to repeat my objection to any testimony with respect to these matters at the Ford Motor Company. I am making this objection again, so it will not be lost sight of.

Trial Examiner Jaffee: He may answer.

A. I will speak of the period subsequent to the signing of the May 9 contract. The reason I speak of it is because the Ford Motor Company, during negotiations with us,

wanted to break the bargaining unit into several separate units.

Q. (By Mr. Nelson) Based on classifications?

A. Based on classifications. We, of course, requested a unit, a single unit embracing all of the classifications covered by the contract. However, we did agree—

Q. (Interposing) May I interrupt you a moment and ask if you had some specific negotiations relating to this subject matter with the Ford Motor Company?

A. Oh, yes, several days of it.

Q. All right, go ahead.

A. However, we did arrive at this solution as presently provided for in the contract. We did set the Marine
372 group up as a separate unit with their own bargaining committee, because their problems are entirely different from the problems of the foremen in the shop.

Q. They are on the lakes and their conditions are different?

A. That is right, they have their own committee, although an officer of the Association can sit in and be present during their negotiations, and so forth, during the processing of grievances. We took the other six classifications of foremen and lieutenants up to the assistant chiefs in the fire department, we put them in one unit, but for purposes of representation, we broke it into three categories. We took the general foremen and the assistant general foremen and made that one level. We took the general shift foremen and the division foremen and made that a level, and we took the division shift foremen and the shop foremen and made that a level, and each level has a representative who is classified from that level, and those three representatives constitute a plant-wide committee, so that when they go into negotiations or discuss a problem, there is a member on that committee of each of the levels of supervision in the plant, and it has proven very satisfactory to our viewpoint, and I feel that the Company thinks it is very satisfactory also.

Q. They have made no complaints.

A. No.

373 Q. (By Mr. Nelson): That is on experiences up to the present time?

A. Experiences to the present time. In fact, we have even added representation of a couple of the plants where there weren't enough.

Q. Now, in matters of grievances or matters of controversies, no matter what the level of supervision they originated in, they finally wound up in a single channel for handling?

A. That is right.

Q. In a unified single channel?

A. That is right.

Q. I will ask you that question in just a little different form to reach another aspect of it. You had from the beginning a unified chapter at the Ford Motor Company, didn't you?

A. That is right.

Q. One chapter representing all levels of supervision and these extra ones you have indicated?

A. Yes, and all four plants that were organized.

Q. Within the Association and among the supervisory forces referred to affected by this contract, so far as you know, was there any complaint about the unity of the bargaining unit?

A. No, they are very well pleased with it.

374 Q. The foremen themselves are very well pleased?

A. That is right, they attend the same meetings, get acquainted and they assist each other. They set up a spirit of cooperation.

Q. And it extends from one level to the other, does it?

A. Yes. I can answer that question this way, by saying we referred back to the membership, the Ford Motor Company's original plan establishing separate units for each level of supervision. The membership rejected it on the ground that they would rather not have a contract than accept that. The negotiating committee took it back to the Ford Motor Company and said that they would rather do without a contract than accept it, that is the Ford Motor plan, and that the membership had instructed them to say so.

Q. Let me ask you this: Have you experienced any difficulty within the Association or organizations with the

Ford Motor Company either for contracts or handling matters under it because of the unit of bargaining?

A. Absolutely none.

Q. There is no complaint either from the Company or the men?

A. None whatsoever.

Q. And as a matter of fact, do you have in mind that the Ford Motor contract provides for this repre-
375 sentation at all the Ford plants throughout the country?

A. The contract covers all of the Ford plants automatically when we have a fifty-one per cent majority or a majority of the Ford foremen as members.

Q. In that plant?

A. In that plant.

Q. And you are bearing that in mind in giving the answers to the questions I have just asked you?

A. I am. The description I gave you of the three plantwide committeemen or representatives a moment ago covers the Rouge, the Bomber plant, which also has the same setup, the Lincoln plant has it and so on and so forth. Each of the four plants where we have a majority represented and they are covered by the contract, they have their own representatives, their own chairmen, plantwide representatives and so forth.

Q. And you have been bearing that in mind in stating that there was no complaint and no difficulty?

A. That is right.

Mr. Nelson: I believe that is all, Mr. Examiner.

Trial Examiner Jaffee: Are there any further questions of the witness?

Mr. Donovan: I have one question here regarding which I believe there was a misunderstanding. I would like to clear that up before the witness is finished.

376 Trial Examiner Jaffee: Go ahead.

Recross-Examination.

Q. (By Mr. Donovan): Mr. Keys, you were asked if there was a—there was a little confusion, I think, respecting different statements alleged to have been put in the

newspapers at or around the time of your War Labor Board hearing, May 18th and May 19th. You were asked, I believe, on one occasion this morning or yesterday—I guess that was yesterday—whether or not—and I would like to ask you this now in order to segregate these questions—I would like to ask you now if it was stated in the Detroit Press on May 18, 1944 or at any other time near that, that you were quoted as saying that it was not the belief of General H. Arnold or Rear Admiral Price which prompted the back-to-work decision and that rather the Foreman's Association of America felt that the War Labor Board was taking a more favorable attitude. If that statement was attributed to you, will you state whether or not you agree that would be your views or not?

Mr. Nelson: I am going to try to keep out of this newspaper business if I can, I object to this.

Trial Examiner Jaffee: I think the form of the question is objectionable.

Q. (By Mr. Donovan): Will you state whether or not if such an assertion was attributed to you by anybody,
377 whether or not that is correct or incorrect?

Mr. Nelson: I object to that as irrelevant and immaterial.

Trial Examiner Jaffee: The objection is sustained as to the form of the question.

Q. (By Mr. Donovan): Do you say that the reason you got the men back to work was because the Foreman's Association of America felt the War Labor Board was taking a more favorable attitude or not?

Mr. Nelson: I believe, Mr. Examiner, that that is immaterial.

Trial Examiner Jaffee: You may answer.

The Witness: No.

Q. (By Mr. Donovan): That is not the reason?

A. No.

Q. And if any such statement appeared in the Press, if it did, then it was inaccurate so far as you are concerned?

Mr. Nelson: I think that is immaterial. Inaccurate statements of the Press are the commonest things in the world.

Trial Examiner Jaffee: I will not comment on that. Let the witness answer. Read the question, please.

(Question read.)

Mr. Nelson: I would like to call your Honor's attention to the fact that I want to keep out of the newspaper
378 business if I can.

Mr. Donovan: I know you would like to.

Trial Examiner Jaffee: Perhaps I am prejudiced. We will go off the record for this discussion.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Mr. Donovan, suppose you ask the question again.

Q. (By Mr. Donovan): If such a statement appeared in the press what prompted you to take or rather get the men back to work after those May strikes? It was not because of the statements made by General H. H. Arnold or Rear Admiral Ernest W. Price, was it, or was it because you felt—the Foreman's Association of America that is, felt that now the War Labor Board was going to take a more favorable attitude? Did you ever make any statement like that?

Mr. Nelson: I object to it as being irrelevant and immaterial.

Trial Examiner Jaffee: He may answer.

Mr. Nelson: The whole thing is irrelevant.

Mr. Donovan: Mr. Keys, you said no, didn't you?

The Witness: I said no.

Mr. Donovan: If one of your officers of your Association said that he also denied that General Arnold's appeal had been the principal factor for ending the strike and
379 if he claimed that the Foreman's Association had won a "behind the scenes victory for its objectives" and terminated the strike on that basis, would you or would you not agree with that?

Mr. Nelson: I object to that as being irrelevant and immaterial.

Trial Examiner Jaffee: The objection is sustained.

Mr. Donovan: It is sustained?

Trial Examiner Jaffee: Yes.

Mr. Donovan: All right. That is all we have.

Trial Examiner Jaffee: Are there any further questions of this witness?

Mr. Nelson: I believe not.

Mr. Donovan: No, we have none.

Trial Examiner Jaffee: I have one, I think. Mr. Keys, let me say preliminarily that this question has to do with the Ford Motor Company and I am going to assume that counsel for the Company objects, so that he will not feel embarrassed in objecting to an examiner's question. I might say parenthetically that hereafter if I do ask questions I wish you would not feel embarrassed in objecting to them. There have been occasions when I have been known to sustain objections to my own questions.

Q. (By Trial Examiner Jaffee): Mr. Keys, you have testified in connection with your supervisory experi-

380 ence at the Ford Motor Company, that if a departmental committeeman from the United Automobile Workers came to you and the matter involved policy that you could not handle it but would have to refer it to the Labor Relations office?

A. That is right.

Q. How do you define, in that connection, the term "policy"?

A. Of course, we had to use our own judgment on a lot of cases that came to us. There were certain cases where we attempted to make a settlement which were overruled by the higher authorities. If it was something that we knew we could do as a foreman without being called on the carpet for it we would do it. If there was any doubt in our mind as to whether we had the authority to do it or not, we would refer it to the higher authorities.

Q. As I recall your earlier testimony, you said among other things that you might try to get a pair of gloves for an employee who complained that he could not get them?

A. That is right.

Q. And that you might direct the mopper-upper to mop up the oil around the machines where it was laying?

A. That is right.

381 Q. I gather from your testimony that it is your opinion—and if I am wrong you can correct me—that you do not consider your role in such matters involves "policy"?

A. Certainly not. The formulation of policy in any manner and—well, perhaps using the oil as an example, it

certainly is the policy of the Ford Motor Company to use the term "policy"—to keep oil off the floor. Therefore, I knew that I was administering the Company policy when I had the mopper mop up the floor and I did so. The large bulk of the grievances were of the nature that the foreman could dispose of them because they were minor things like mopping up the oil, getting a pair of gloves or helping a man get tools quicker. One of the grievances the workers had was that they had to stand in line ten or fifteen minutes after the bell rang to check their tools in at night. As a foreman I would attempt to get the crib man to expedite that for the men.

Q. You were asked about certain statements or pamphlets entitled "Foreman's Guide to Labor Relations." It is bulletin 66 of the United States Department of Labor or one of the bureaus of the department. One of the excerpts was a statement on page 10 reading as follows: (Reading):

"It goes without saying that the foreman's primary responsibility is to protect the interests and rights
382 of management."

I understood you to testify that you did not agree with that. Have I quoted you correctly?

A. That is right.

Q. What is wrong with it, if anything?

A. Because if he put the interest of management or his employer before anything else well, he might even commit murder.

Q. Well, I assume to begin with that his primary interests, if I may use the expression "primary interest" is to God, and his country and things like that. Such matters aside for the moment, if you can separate them, what is wrong with the statement I have just read?

A. If the statement confines itself to his duties as a foreman and solely on his job then his primary interest would be to do his job on behalf of his employer, yes.

Q. Let me put it in another way. The statement I just read begins "It goes without saying that the foreman's primary" and so forth and so forth. In other words, is it his primary responsibility as a foreman—and I emphasize the word "foreman," to protect the interests and rights of management?

A. Well, I am trying to confine myself now to just his foremanship and his period of employment in the plant.

Q. Let me put it another way.

383 A. I still cannot see where it is his primary objective to protect the interests and rights of management if he has to do things that hurt other people.

Mr. Donovan: May we have the record reflect the long pause after the Examiner's question which the witness took before he just answered?

Mr. Nelson: It is agreeable with me.

The Witness: If the employer considers it to his best interests to discriminate or discipline or discharge employees it is certainly not the foreman's primary responsibility, so far as I am concerned.

Q. (By Trial Examiner Jaffee): Let's put it this way: You spoke of a situation where a foreman gets a differential of let us say 15 or 20 or 25 cents; why does he get it?

A. Because of the nature of his duties and responsibilities.

Q. Well, he gets paid, doesn't he, to take care of those responsibilities for management?

A. Yes, but there are limitations. If it is looking after machines and seeing that production is produced and so on, within the limitations of what he is paid to do, then that is his primary responsibility but when it gets out of bounds it certainly is not. If his employer is seek-

384 ing to have him as a supervisor, protect his interests and rights by discrimination and other things, certainly that is not his primary responsibility.

Q. I want to change the language which I just read from this bulletin, slightly, and see if you will agree with it. (Reading):

> "It goes without saying that a foreman's primary responsibility within the scope of his job as foreman, is to protect the interests and rights of management."

A. Well, I will agree with it now.

Trial Examiner Jaffee: Are there any further questions of this witness?

Mr. Nelson: I have no further questions.

Mr. Donovan: We have no further questions.

Trial Examiner Jaffee: The witness is excused. We will recess at this time until 2:00 P. M.

(Whereupon, at 12:30 P. M. a recess was taken until two o'clock P. M.)

385 After Recess.

(Pursuant to recess the hearing was resumed at two o'clock P. M.)

Trial Examiner Jaffee: The hearing is in order.

Mr. Nelson: Shall I call the next witness?

Trial Examiner Jaffee: Yes.

Mr. Nelson: I call Mr. Prosper Traen.

PROSPER TRAEN,

a witness called by and on behalf of the Petitioner, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Nelson): Mr. Traen, your residence, if you please?

Trial Examiner Jaffee: Let us get the name, please.

Q. (By Mr. Nelson): How do you spell your name?

A. P-r-o-s-p-e-r T-r-a-e-n.

Q. And your residence?

A. 21916 Hayes.

Q. How long have you lived in Detroit or in its vicinity?

A. Since 1926.

Q. By the way, are you native born?

A. In Detroit?

Q. Yes.

386 A. No.

Q. Where were you born?

A. Belgium.

Q. Where in Belgium?

A. Near Austin, Belgium.

Q. And you came to this country when?

A. 1913, I think it was.

Q. And have you lived in Detroit most of the time since you came?

A. Since 1926.

Q. And you have been naturalized, have you?

A. Yes.

Q. How long is it since you were naturalized?

A. 1941, I think it was.

Q. Did you have any training in Belgium?

A. No, sir.

Q. You had your training after you came to this country?

A. Yes, sir.

Q. How far did you go in school?

A. The 8th grade.

Q. And then you went to work?

A. Yes, sir.

Q. Did you go to work as an apprentice in some line to learn to be a skilled man or something of that kind?

A. No.

387 Q. You just went to work?

A. I went to work in the coal mines.

Q. Where?

A. In Illinois.

Q. How long did you continue in the coal mines?

A. About nine years.

Q. While there I suppose, Mr. Traen, that you were a member of the miners Union?

A. Yes.

Q. The United Mine Workers of America?

A. Yes, sir.

Q. In what local, if you remember?

A. I do not remember the local.

Q. In what town or city?

A. In Christopher, Illinois.

Q. And you continued to be a member of that union throughout your period as a miner?

A. Yes, sir.

Q. Did you work at the face or on some other trade?

A. I worked during the nine-year period practically at all the trades in the mine.

Q. Was it electrified?

A. Yes, sir.

Q. And you worked as a miner, timber man, trackman, and motorman?

388 A. Yes, sir.

Q. Any other trades?

A. Machine man and cutting coal.

Q. Cutting coal? You were cutting coal there with machines?

A. Yes, sir.

Trial Examiner Jaffee: Were those strip mines?

The Witness: They were shaft mines.

Q. (By Mr. Nelson): The shaft was sunk and the vein was followed out?

A. Yes, sir.

Q. And you apparently did not work on top at any of your trades?

A. No, sir.

Q. Your trades were all below ground?

A. Yes, sir.

Q. Well, after that experience where did you go?

A. After leaving the coal mines I came to Detroit.

Q. By that time had you married?

A. Yes, sir.

Q. You are a married man with a family, are you?

A. Yes, sir.

Q. When you got to Detroit that was what year?

A. 1926.

Q. And you have lived here ever since?

389 A. Yes, sir.

Q. Or hereabouts?

A. Yes.

Q. What has been your work or employment since that time?

A. I have been employed at the Packard Motor since that time.

Q. You came here and went to Packards and have been there ever since?

A. Yes.

Q. That is some eighteen years?

A. Yes.

Q. What did you do when you first went to Packards?

A. I hired in as an assembler.

Q. They were manufacturing automobiles and trucks at that time?

A. Automobiles.

Q. Automobiles?

A. Yes.

Q. How long did you work as an assembler?

A. As an assembler? I practically followed the assembly line up to the war period all the time. On assembly itself about one year and then I was given a promotion.

Q. Where were you promoted? To a supervisory position?

390 A. As a handy man, you might say.

Q. From the assembly line as such you went to a handy man about the assembly line?

A. Yes.

Q. And that went on for how long?

A. In the assembly work?

Q. Yes.

A. I practically started—I mean, I practically stayed in the assembly work all of the time up to this war period.

Q. Until 1941, following Pearl Harbor?

A. Yes.

Q. At any time up to 1941 did you have a supervisory position or rank?

A. Yes, sir.

Q. When did that begin?

A. Well, I was made a straw boss about, oh, I would say about twelve years ago, somewhere in that neighborhood.

Q. And what is your present position?

A. General foreman.

Q. You are employed by the Packard Motor Company now?

A. Yes, sir.

Q. And you are a member of the Packard Chapter of the Foreman's Association of America?

391 A. Yes, sir.

Q. You say you were made a straw boss about twelve years ago?

A. Yes, sir.

Q. On the assembly line?

A. Yes, sir.

Q. And over what portion of the assembly line did you supervise?

A. At that time my supervision extended over the chassis assembly.

Q. And as straw boss, presumably,—or, did you have any foremen under your supervision?

A. At that time, I was the lowest rung of supervision.

Q. You had how many men under you?

A. At that time there was, in one period, we ran as high as 240.

Q. Under your supervision?

A. Yes, sir.

Q. Doing what?

A. Assembling chassis.

Q. And how long did you remain in the position of a straw boss?

A. I think it was in 1935 when we built a new assembly line, and I was changed.

Q. What is the fact from 1926 to 1935 as to whether you were a member of any labor organization at Packards?

392

A. No, I was not.

Mr. Donovan: Did you say at Packard?

Mr. Nelson: At Packard.

Q. (By Mr. Nelson): I understood you to say you worked there all that time?

A. Yes, sir.

Q. When the organizing drive came on in 1935, 1936 and 1937 of the maintenance and production workers, you already were a foreman?

A. Yes, sir.

Q. What is your present position, Mr. Traen?

A. General foreman, at this time.

Q. Now, when you say straw boss, there are four grades of foremen with whom we are concerned here—which one of those grades does that correspond to?

A. I would say to assistant foreman.

Q. And that is the lowest grade of foremanship we are concerned with here, is that right?

A. That's right.

Q. Corresponding to the assistant foremen, is that right?

A. Yes, sir.

Q. Now, the general foreman is where in this group of four foremen, where you are now?

A. It starts with assistant foreman, foreman, and
393 the general foreman.

Q. And that is the next to the highe t classification that we are concerned with here?

A. Yes, sir.

Q. You have, however, occupied, have you, the intermediate grades there of foremanship?

A. Yes, sir.

Q. And how many years were you a foreman?

A. About five years, I would say.

Q. On the assembly line?

A. Yes, sir.

Q. What is your present compensation as a general foreman?

A. The base rate is $304.50 a month. That's for eight hours.

Q. Is there something for overtime?

A. Yes, sir.

Q. Is there any bonus involved in computing your actual compensation?

A. No, sir.

Q. With the overtime and your base rate, what is your average income per month?

A. I would say around five hundred, something like that.

Q. In the neighborhood of $500.00 per month?

A. Yes, it varies.

394 Q. It varies according to the amount of overtime?

A. Yes.

Q. But $500.00 would be a fair approximation of it, would it?

A. Somewhere in there, yes.

Q. What was it as a foreman?

Mr. Dahling: May we have the dates, please?

Mr. Nelson: Yes, I will fix the dates in a moment.

Mr. Dahling: Thank you.

A. As a foreman, I worked for $240.00 a month straight, I guess.

Q. (By Mr. Nelson): And what was the last year in which you worked as a foreman?

A. I think it was 1941.

Q. Do you remember about what part of the year you passed from a foreman to a general foreman?

A. No, I can't just place it exactly.

Q. This $240 would be the last pay you drew, apparently, is that correct?

A. I started at $240, then I got a raise to $260.

Q. So your pay as a foreman ranged from $240 to $260?

A. Yes, sir.

Q. And that, again, is the base rate, is it?

A. Yes, sir.

Q. Was there overtime involved at that time?

395 A. At that time we got no overtime pay.

Q. As assistant foreman, what was the last year during which you worked in that position?

A. I just can't place the date.

Q. Do you recall your last pay as assistant foreman?

A. It was an hourly rated pay, but I don't remember it; it's too far back.

Q. But it was an hourly rated pay?

A. Yes.

Q. Can you remember the rate per hour that you were last paid as assistant foreman?

A. No, I can't remember it.

Q. In your present employment, presumably, you have some foremen under your supervision?

A. At this time, I have one assistant foreman.

Q. One assistant foreman?

A. Yes, sir.

Q. Do you have any foremen?

A. No, no foremen under my supervision at this time.

Q. Are you still on the assembly line?

A. No, I am up in the polishing line, now.

Q. How long have you been in the polishing line division now?

A. Since the war program started.

Q. At Packards?

396 A. Yes.

Q. How many maintenance or production workers, or both, do you have under your supervision?

A. At this particular time?

Q. Yes.

A. I think there is somewhere about seventy, right now.

Q. And you have one assistant?

A. One assistant, yes.

Q. And no foremen?

A. No foremen.

Q. Do you know why it is that that particular grade is omitted in your present setup? Is there any reason for it that you know of?

A. Well, I cannot see any particular reason why it should be.

Q. You say you mean that you do not see any reason why there should be a foreman and an assistant foreman under you?

A. I cannot see any particular reason why there shouldn't be one.

Q. Why there shouldn't be?

A. Yes, sir.

Q. What do these seventy men do?

A. They are in—some are polishers and some are platers, polishing and plating.

397 Q. And the parts are parts of what machine?

A. The parts that we produce—we were working on some parts for aircraft motors and some parts for Marine motors.

Q. Parts for motors?

A. Yes.

Q. Prior to the organization of the Packard Chapter of the Foreman's Association of America was there any organization among the foremen at Packards?

A. I understand that there was at one time.

Q. Did you take part in it?

A. No, sir.

Mr. Dahling: I move the answer be stricken as hearsay, Mr. Examiner.

Trial Examiner Jaffee: What is your understanding based on? Personal knowledge or something else?

The Witness: Personal knowledge. My understanding is based on the fact that I was contacted and asked at one time to join with this particular organization.

Trial Examiner Jaffee: It may stay.

Q. (By Mr. Nelson) You did not become a member of that organization?

A. I did not.

Q. Do you recall the year in which that took place?

A. 1937.

398 Q. When did you first hear of the Foreman's Association of America?

A. The first I heard of the Foreman's Association of America was when it was brought to my attention by another foreman in Packard Motor Company.

Q. Well, my question was when, if you can remember?

A. I think it was in October of 1942, I believe it was.

Mr. Donovan: We cannot hear the witness.

Mr. Nelson: He said he believes it is October, 1942.

Q. (By Mr. Nelson) I will give you this much assistance. Was it before or after Pearl Harbor?

A. It was after, I believe.

Q. How long after?

A. I think I can possibly refresh my memory a little bit here from these papers. Yes, it was in 1942 all right.

Q. Did you fix the month as October or some other month?

A. Yes, I think it is October.

Q. And some other foreman called the matter of this organization to your attention?

A. Yes, sir.

Q. What did you do about it?

A. Well, I contacted the offices of the Foreman's Association of America at that time to get more

399 information on it.

Q. Let me ask you whether you were interested?

A. Very much so.

Q. Why were you interested?

A. I was thoroughly convinced that there was a dire need for a foreman's organization in our plant.

Q. Was that with reference to experiences of other foremen or your own or both?

A. My experiences and other foremen also that I spoke to.

Q. What were the things that were on your mind at that time as indicating the need of an association or organization?

Mr. Dahling: Just a minute, please. I object to that question, Mr. Examiner, as again leading into this matter, I presume, of grievances. I want to get a little ahead of them this time. This hearing has nothing to do with that sort of thing. If counsel desires to develop that I want to head it off as far as possible.

Trial Examiner Jaffee: The witness may answer to indicate merely his reason. It is not to be construed as independent evidence of the many facts, but that it is such reason.

Q. (By Mr. Nelson) I believe, Mr. Examiner, my question was what was his reasons for looking up the
400 organization that the other foremen had told him about.

A. Well, my reason was I knew that independently I could get nowhere in trying to reason with my superiors and I knew that collectively we could possibly arrive at certain things that would be fair to the foremen.

Q. And were there things in your experience that you regarded as unfair?

A. Yes.

Q. What were they, briefly?

Mr. Dahling: I make the same objection, Mr. Examiner. The witness has stated that there were things that he thought needed the support of unionization apparently, and I think that is sufficient. I do not believe there is anything further necessary.

Trial Examiner Jaffee: The witness may answer with the limitations previously indicated.

The Witness: May I have the question again?

Q. (By Mr. Nelson) The Examiner permits you to answer. What were the things you wanted to take up in a collective form or that you regarded unfair in your situation? The Examiner limited you to your own views and your own experiences.

A. My experience was the demotions from time to time. As the trend of the time might go. If the production went down a little they did not hesitate to cut you down
401 from a salary to an hourly rate as they seen fit, without question or without asking you whether you liked it or not.

Q. Were there any other things that come back to you now?

A. Yes, the rates of pay, of course, were not commensurate with the hours we put in at that time. I remember personally putting in over eight hours—many hours over eight hours day after day, Saturdays and Sundays without any pay.

Mr. Dahling: May we have the time when this occurred?

Mr. Nelson: Yes.

Q. (By Mr. Nelson): And you fixed the time as when you thought the foremen told you about it, which was October, 1942?

A. Yes.

Q. To what period do these facts apply that you are giving us?

A. These facts apply particularly to the period when we were building automobiles.

Q. Well, did they apply at the time, namely, October, 1942?

A. I believe it was on March 1, 1941 that there was a new policy which went into effect in the paying of foremen's rates.

402 Q. That is, they had a change?

A. There was a change, yes.

Q. Did that change remedy some of these things?

A. Well, it remedied the overtime pay to a certain extent.

Q. And whether or not you as a foreman were con-

sulted about that change or as for your acquiescence to it—

A. We were not.

Q. When you looked up the Foreman's Association of America where did you go and what did you do?

A. When I looked up the Foreman's Association of America we went to Dearborn on Schaefer Road.

Q. By "we" whom do you mean?

A. I mean myself and several other foremen.

Q. Do you mind giving us their names?

A. Yes, I could give you some of them. Mr. Sietz was one of them, Mr. Sullivan was another, and Mr. Pawlowski—as a matter of fact, Mr. Nelson, I think the majority of the people you have on your original asked for charter were our first.

Trial Examiner Jaffee: The majority of the people on the original application for a charter with the Packard Company?

Mr. Nelson: That is Petitioner's Exhibit 10.

The Witness: Yes.

403 Q. The majority of those people went with you over to the Carman Theatre Building, is that right?

A. Yes, sir.

Q. Did you see a representative of the Association there?

A. Yes, we met a Mr. Ross there.

Q. He was membership director at that time?

A. I believe he was, yes.

Q. You had a talk with him, did you?

A. Yes, sir.

Q. And did you, and all the other persons that went over from the Packard Company, have a talk with him?

A. Yes, sir.

Q. What did you do following that talk with Mr. Ross?

A. Following that talk with Mr. Ross we signed application cards.

Q. Right there and then?

A. Yes, sir.

Q. How many of them?

A. I think there was between 15 and 20, something like that.

Q. 15 or 20 men?

A. Yes.

Q. What grades of supervision were represented in that group of 15 or 20 men?

A. There was assistant foremen, foremen and general
404 foremen represented there.

Q. Did everybody sign?

A. Everyone that was there signed.

Q. Everyone who was present at that time signed?

A. Yes, sir.

Q. How long a talk did you have with Mr. Ross?

Mr. Karasick: Mr. Examiner, I do not like to object to the questions on the part of counsel, but I do believe, for the sake of the record, that much of this material can be eliminated. It is not of particular value to the Board.

Trial Examiner Jaffee: I do not think it makes much difference whether the talk was 20 minutes, 30 minutes, or 40 minutes; what time of the day it was, nor the kind of weather.

Mr. Nelson: I offer it on the spontaneity of the organization.

Trial Examiner Jaffee: I know, but I do not think the length of the trial is of any particular moment.

Q. (By Mr. Nelson) What did you do following this conference with Mr. Ross?

A. We went back to the plant and, of course, we talked about the foremen's organization with several more foremen.

Q. Did you do that in a meeting or individually?

A. Well, it was mostly individually, from man to man.

Q. Then what did you do?

405 A. Then the organization grew in leaps and bounds from there on.

Q. You mean at the Packard Motor Car Company?

A. Yes, sir.

Q. You finally made an application for a charter?

A. Yes, sir.

Q. And you were one of the signers?

A. Yes, sir.

Q. The charter was granted?
A. Yes, sir.
Q. And the chapter was formed?
A. Yes, sir.
Q. Did you become an officer of the chapter?
A. Yes, sir.
Q. What office?
A. The first office was as a member of the Executive Board.
Q. What chapter?—I mean, of the chapter?
A. Yes, sir.
Q. By the way, have you ever held a national office?
A. No, sir.
Q. Have you ever, since that time, held an office in the Packard Chapter?
A. Yes, sir.
Q. Have you held any other offices than that as a
406 member of the Executive Board of the Chapter?
A. Yes, sir, I am now president of the chapter.
Q. Since when have you been president of the chapter?
A. Since 1942.
Q. Were you the first president?
A. No, there was another president for a short duration.
Q. Than yourself?
A. Yes.
Q. And you have been president ever since, have you?
A. Yes, sir.
Q. Did you have anything to do with the petition that was filed with the National Labor Relations Board for certification of your chapter as the bargaining agent or of the Foreman's Association as bargaining agent of the foremen and supervisory forces at Packard?

Mr. Dahling: Mr. Examiner, I again object to testimony with respect to—I assume this is the first petition for certification that was filed—on the ground that we are not here considering that. There was a new petition filed, and according to the evidence I get in this case, that matter has been dropped, it is dead, and of no further interest that I can see in this proceeding.

Trial Examiner Jaffee: He may answer.

The Witness: Yes, sir.

Q. (By Mr. Nelson) Did you have anything to do with the negotiations leading up to the consent election? Were you at any of the conferences or interviews?

407

A. No, I don't think I was.

Q. Were you here when Mr. Keys described the conferences he had with Mr. Weiss in his office and one or more in the offices of the Seventh Region?

A. Yes.

Q. Were you at any of those meetings?

A. I was at one at the NLRB office.

Q. Now, do you recall whether there was any discussion at that time, Mr. Weiss being present, respecting the inclusion of general foremen in the bargaining unit?

A. Yes, sir.

Q. What is your recollection of that conversation?

A. I remember that Mr. Weiss objected to twelve general foremen on the list.

Q. Did he name them?

A. No, sir, not to my knowledge.

Q. Did he indicate what positions they held?

A. Yes, he indicated that they were general foremen of more than one department.

Q. Do you remember what was said as to how many general foremen in all there were at that time?

A. I believe at that time there was some 90.

Q. And the 12 were indicated by Mr. Weiss as being general foremen with supervision of more than one department?

408

A. Yes, sir.

Q. Do you recall what was said, finally, as to what should be done about including all or excluding them?

A. I believe it was finally agreed that we would exclude those particular twelve.

Q. And did you thereafter take part in the election?

A. Yes, sir.

Q. Were you present at any of those conferences following the election? I mean, conferences with the Company?

A. I believe—no, I don't think I was; I don't think there was any after that election; not when I was present.

Q. Now, following that agreement in the Seventh Regional Office, were any general foremen advanced, at least by designation by the Packard Company, to the position so called of superintendent or assistant superintendent?

Mr. Dahling: Mr. Examiner, I presume I have a continuing objection to all of this line of testimony with respect to this first arrangement now under discussion?

Trial Examiner Jaffee: Yes, that is right.

Mr. Dahling: Furthermore, on this matter of foremen being promoted to a so-called position, I object to that as being incompetent and irrelevant. I do not see any issue such as that involved in this case.

Trial Examiner Jaffee: He may answer.

409 The Witness: Yes, sir.

Mr. Donovan: Mr. Trial Examiner, I would like to register an objection against the use of the word "so-called" in a question. I think the question should be reframed, unless that word "so-called" is stricken. It has the vice of carrying an unfavorable connotation against the Employer.

Trial Examiner Jaffee: Of course, the questions are not evidence; the answers are.

Mr. Nelson: All right.

Q. (By Mr. Nelson) How many?

A. Two that I remember.

Q. What were they?

A. One was the vice-president of our Chapter and the other was the president.

Q. What happened to them?

A. They were promoted.

Q. To what ranks?

A. Superintendent and assistant division manager.

Q. And how soon after your organization were they promoted or how soon after their election to those offices were they promoted?

A. Well, it was less than a year. I wouldn't say just exactly.

Q. On their promotion to the offices of superin-
410 tendent and assistant superintendent, respectively, what did your chapter do? Did they remain in office or continue their membership or did they withdraw?

A. They were given withdrawal cards.

Q. And, presumably, you proceeded to elect men to succeed them?

A. Yes.

Q. Is that when you became president of the Chapter?

A. Yes, sir.

Q. Mr. Traen, following the consent election—by the way, I wanted to ask you about that—that was held in a building nearby, was it?

A. It was held in a voting booth.

Q. In what month?

A. I think it was in February.

Q. Of 1933?

A. 1943.

Q. 1943, I am sorry. And by "voting booth", you mean one of these little green houses that the City of Detroit furnishes for the voters?

A. Yes, sir.

Q. About how many people could get in that at one time?

Mr. Dahling: Mr. Examiner, I cannot see how the size of the voting booth has any bearing on this case, or the time of the year.

411 Trial Examiner Jaffee: I am going to assume, unless it is contradicted, that it was cold.

Mr. Nelson: It was worse than that; it was zero weather, the men stood outside until they could cast their votes, and you will remember a request was made to cast their votes within the Packard Motor building at some convenient place. I think it bears very distinctly on the spontaneity and determination of these men to organize and cast their votes.

Trial Examiner Jaffee: While you are not confined to one witness, how many witnesses you are going to use, I do not know, but I think it should depend somewhat on the relevancy of the issues involved.

Mr. Nelson: We have no witness so far who has bee personally present. It is all hearsay so far as that witne is concerned, as it was brought out on cross examinatio I offer now one outright witness on the circumstances.

Trial Examiner Jaffee: I am going to exclude it.

Q. (By Mr. Nelson) Did you undertake to adjust griev ances and conduct negotiations with the Packard Compan officials following the consent election?

A. Yes, sir.

Q. Were you successful in doing so?

A. No, sir.

Q. With respect to what matters did you undertak

412 to discuss and negotiate with the Company?

A. We attempted to meet with the committee of th Company with a committee of our own.

Q. You mean a committee of the foremen?

A. Yes.

Q. What happened?

A. Just prior to the vote we were told that there woul be no further meetings with members of the Company b cause we were having a vote.

Q. How is that?

A. Because we were having a vote.

Q. Who told you that?

A. Mr. Weiss.

Q. Were you present when it was said?

A. Yes.

Q. Where were you?

A. In Mr. Weiss' office.

Mr. Dahling: We have no objection to this testimon and do not intend to negotiate, if that will save tim Furthermore, that we never did negotiate with any repre sentatives of the Foreman's Association of Americ..

Trial Examiner Jaffee: Let's see if we can break thi up. I understood you to say in the beginning, Mr. Dah ing, that you have not negotiated and do not intend t negotiate with representatives of the Association.

413 Mr. Dahling: That is correct.

Trial Examiner Jaffee: And you went on to say tha

you never did negotiate with representatives of the Association.

Mr. Dahling: That is correct.

Trial Examiner Jaffee: And to complete the thought, let me ask you, did the Company ever intend to negotiate with the Foreman's Association of America?

Mr. Dahling: The Company never intended to negotiate with the Foreman's Association of America.

Trial Examiner Jaffee: All right.

Q. (By Mr. Nelson) Mr. Traen, how do you describe your present duties?

A. Present duties as general foreman?

Q. Yes.

A. Well, my duties at present consist of getting my orders from the superintendent in the early part of the day and issuing them down the line to the assistant foremen as to the quality and quantity of pieces supposed to be produced.

Q. Have you the power to hire new men? Can you hire a man?

A. I can request.

Q. You can request?

A. Yes, sir.

414 Q. To whom do you send that request?

A. I make out a request for help and I forward it to my superintendent for his signature.

Q. Can you discharge?

A. I can request a discharge.

Q. To whom do you send that for action?

A. The request is sent to the Labor Relations Office.

Q. Can you lay a man off?

A. That has to be requested.

Q. To whom?

A. To the employment department.

Q. Can you you send a man home?

A. The only time you can send a man home is if there is a complete agreement with the representative of the rank and file union as to whether you are able to or not; otherwise again you have to appeal to the Labor Relations Department for a decision.

Q. Can you send a man home for as much as one day or two days or three days?

A. There is a set rule of penalties that you can apply if it is proven that the man you are sending home is guilty of the charge you accuse him of.

Q. How far can you go without appealing to somebody above you in sending a man home?

A. You cannot go any further than unless the steward, I will call him, in the department, agrees with you. Then you can apply the penalty, but that is as far as you can go. If he disagrees it goes to the Labor Relations Department hands.

415

Mr. Dahling: That is the Union steward?

The Witness: Yes. If he agrees with you.

Q. (By Mr. Nelson) Can you raise a man's pay?

A. No, sir.

Q. Can you cut a man's pay?

A. No, sir.

Q. Can you recommend, under the present setup—

A. (Interposing) The price is set on each classification.

Q. By somebody else?

A. Yes, sir.

Q. So you have nothing to do with that?

A. No, sir.

Q. In the event of a slowdown or a layoff, can you call a man back to work?

A. No, sir.

Q. Where does that go?

A. That is handled by—if you need additional help, you apply to the employment department and they in turn send the help to you.

Q. I am assuming that the man has once been satisfactory and has been employed and that he was laid off solely because of a slackness in work and that the work then picks up, can you call that man back to work or is that done by some other department?

416

A. The employment department.

Q. And perhaps you will get that man or some other man, as far as you are concerned?

A. Yes, sir.

Q. Can you recommend in that respect a request—

A. (Interposing) I have attempted to recommend but failed at it.

Q. You have had no success at it?

A. No, sir.

Q. What about promotions? Can you promote a man? I mean within your own department?

A. No, I cannot promote anybody. You can change from one classification to another, you can ask for a request to change from one classification to another.

Q. That goes where, that request?

A. That request first goes to your superintendent.

Q. But you cannot do it yourself independent of he?

A. No, sir.

Q. Can you transfer a man from one employment to another, from your department to another department, we will say?

A. No, you have to put in a request for a transfer.

Q. Where does that go?

417 A. To the employment department.

Q. Now, that testimony so far applies to the maintenance and production worker or the hourly rated workers under your supervision, is that right?

A. Yes.

Q. Now, coming to any supervision that is under your supervision. You said you had an assistant foreman?

A. Yes.

Q. Under you?

A. Yes.

Q. Can you select that man yourself?

A. The selection is not final until your superintendent agrees with you on it.

Q. You have to refer to him?

A. Yes.

Q. He has the final say?

A. Yes.

Q. Now, can you transfer that man?

A. No, I cannot.

Q. Is there anything you can do to that man except direct him and inform him without the approval from your superintendent?

A. No, sir.

Q. And that applies to pay, transfer, rehiring, lay-off, discharge and disciplining and everything else, does it?

418 A. Yes.

Mr. Nelson: You can cross examine.

Mr. Dahling: May we have a recess at this time, please?

Trial Examiner Jaffee: We will take a five minute recess.

(Recess.)

Trial Examiner Jaffee: The hearing will resume.

Cross-Examination.

Q. (By Mr. Dahling) Mr. Traen, you testified you were first employed by Packard in 1926, I believe?

A. I think that's when it was.

Q. As an assembler, is that correct?

A. Yes.

Q. Now, what were your duties in that capacity?

A. I was assembling—you mean, right on the job?

Q. Yes. You started in as assembler. What did you do as assembler, what duties and responsibilities were you given on that job?

A. I was assembling on a chassis line.

Q. What do you mean by chassis line?

A. That's the part of the line where they assemble the frame part of the automobile.

Q. That is what is known as the assembly line?

A. That is right.

419 Q. Are there a number of assembly lines in an automobile plant?

A. There is generally one; sometimes it is broken, but there is generally one.

Q. And you were working on just a part of that long line?

A. Yes, sir.

Q. What was your work on these chassis as they came along?

A. Well, I did various jobs on the assembly line.

Q. Tell us about those jobs.

A. I remember working on axles, axle assemblies.

Q. When you say you worked on axle assemblies, what did you do to the axles?

A. Assembling the rear axle assemblies; that's the axle assemblies to the rear axle housings.

Q. You did just one operation, or did you complete the assembly?

A. I did one assembly at a time. I may work on one operation today and on another operation tomorrow. I was moved from job to job to fill in where there was absentees.

Q. At the beginning, that was not true, was it? That was after you became handyman?

A. It started no more than two weeks after I started.

Q. When you speak about the chassis line, that
420 means there are a number of chassis moving down a line, is that the correct explanation of it?

A. Yes.

Q. And different workers do different jobs as these chassis move by them, is that correct?

A. Yes, sir.

Q. And your one job had to do with the rear axle assembly?

A. That was one of the first jobs that I did.

Q. And other workers on the line would have other jobs, that is, they would attach this to the chassis or tighten that bolt and that sort of thing?

A. Yes.

Q. I believe you testified there were 240 people in that department, workers in that particular department.

A. At one time there were 240, yes.

Q. About what would be the area of the plant that this first department that you were in would cover?

A. The first department I was in was known as the FF Department.

Q. How much, or what was the floor space?

A. Oh, it consisted of at that time, I believe it con-

sisted of one complete court building and part of another building.

Q. How much would this court building be?

A. I couldn't say in feet how much it would be:

421 it was quite long, though.

Q. Would you say it is over 100 feet long?

A. Oh, yes.

Q. 200 feet?

A. I would say about—speaking roughly, maybe 500 feet.

Q. All I want is your best recollection, Mr. Traen.

A. It might be 500 feet, I don't know just exactly.

Q. These 240 men would be strung out along this assembly line for this 500 feet?

A. Yes, plus the feeder lines.

Q. Those feeder lines would be coming in from the side to feed the main central lines?

A. Yes.

Q. And you had nothing to do with the feeder lines and were on the main chassis assembly line?

A. I may have worked one day on the feeder line and the next day on the main line. I was moved around from time to time.

Q. And that is when you became a handyman, when you were moved around in this manner?

A. No, I was doing that some time before I was actually given the handyman title.

Q. You were then promoted to be a straw boss, which you say is the same as an assistant foreman?

A. Yes, it carries the same duties.

422 Q. Can you give us about the time you received this promotion?

A. Well,—

Q. (Interposing) Just your best recollection, Mr. Traen.

A. I would say it was somewhere around twelve years ago, or something like that.

Q. About twelve years ago? That would be about 1932, then, you would say?

A. Yes.

Q. And that would be six years after you first were employed by Packard?

A. Possibly.

Q. After you became an assistant foreman or straw boss, as you call it, what did you do? What were your duties?

A. As a straw boss?

Q. Yes, as a straw boss.

A. As a straw boss, I was a direct assistant to the foreman in charge of the FF line.

Q. Were there more than one foreman at that time? Was there more than one foreman at that time?

A. There was one foreman.

Q. One foreman?

A. Yes.

Q. Was there a general foreman in that particular department?

423 A. I do not believe there was a general foreman at that time.

Q. And you say you were under him as his assistant? What did you do as his assistant?

A. Well, I worked directly under his supervision, so to say, checking the quality and quantity of cars that were moved down the line.

Q. You were on the floor all the time, I presume, during your shift?

A. Yes, sir.

Q. How long were you in that position as assistant foreman?

A. I think it was in 1935 or 1936 that we moved to a new department.

Q. You were then made a foreman?

A. No, I wasn't. I was put in charge of the chassis department in the X Division at that time, but if I recollect right, I was still under the category of assistant foreman.

Q. Assistant foreman? As I get your testimony, you took directions from your foreman and he instructed you as to what you were to do?

A. Yes.

Q. And you carried out these directions?

A. Yes.

424 Q. In carrying out these directions, you, of course, instructed the men under you as to their work, as to how it should be done, and so forth?

A. Yes.

Q. You were just carrying down through the chain these directions that you received from higher up?

A. Yes.

Q. Then you went into the X Division and you were still an assistant foreman. You were later promoted to a foreman, were you not?

A. Yes.

Q. And about when was that?

A. I don't know, I can't remember the date.

Q. After you were made a foreman, did your duties change?

A. Yes.

Q. After that, did you have assistant foremen under you?

A. Yes.

Q. And you directed the work of these assistant foremen?

A. Yes.

Q. They, in turn, carried that work down to the workers?

A. Yes.

Q. When were you made general foreman?

A. I think it was in 1942.

Q. It was in 1942?

A. I think it was, I am not too sure about it.

425 Q. Was that when you took over your present job?

A. A while after I took over the present job.

Q. Well, we will say they stopped manufacturing cars around February, 1942. Would that be about the day?

A. No, it was a little later than that. I was up in this department where I am now a while before I got the general foremanship.

Q. Your present department is known as what?

A. In letters, you mean? The symbol, you mean?

Q. Yes, the symbol.

A. S. D. E.

Q. What work is carried on in that department?

A. Polishing and plating.

Q. Is that in a separate building of the plant?

A. Yes, it is known as Building 19, on the third floor.

Q. About how large is that building?

A. Well, I am not a very good judge in feet. Possibly 150, possibly, I don't know; I'm not too sure.

Q. 150 feet long and about how wide?

A. Oh, maybe 50 feet.

Q. And you have about 70 men directly under your supervision?

A. At present, yes.

Q. What do these men do in that department?

A. On the third floor, we have polishers.

426 Q. What do they polish?

A. They polish, oh, aircraft rocker arms, various aircraft castings, marine connecting rods and marine cker arms.

Q. When you say they polish these, what is the operation?

A. Well, a casting may come in very rough and it may require a very fine finish and we polish it down to that very fine finish.

Q. It is necessary to have that fine finish if that particular part is to operate properly?

A. It is necessary to have that fine finish before it will go through inspection.

Q. If it does not go through inspection, it would not operate properly if it did not have the fine finish, is that true?

A. That, I don't know.

Q. You think it would operate perfectly all right even though you did not polish it?

A. We don't attempt to question the Army Inspection on any of those parts. We do them as they say they want them done.

Q. So you do not know whether or not this particular operation of yours is of any particular importance?

A. I would say any operation is of importance, because if it wasn't of any importance, they wouldn't have it done.

427 Q. That would be true, would it not?

A. Yes.

Q. And, therefore, it must be true that these particular parts must be polished in a certain manner?

A. Yes.

Q. And you believe that to be true?

A. Yes.

Q. About how many of these people do this polishing?

A. At the present time, I would say about—there must be about 56.

Q. 56 out of the 70 people you supervise?

A. Yes.

Q. What do the other 24 do?

A. The other 14, you mean?

Q. Yes, I am sorry.

A. The other fourteen are platers.

Q. What do you mean by platers?

A. Plating various items, such as chromium plating and cadmium plating.

Q. What do you plate?

A. We chrome plate some tools.

Q. What is the reason for plating those tools?

A. In some cases where they send them down from the tool room and request a certain amount of platings put on any tool, why; if they request a thousandth
428 additional plating on it, we put the thousandth on it.

Q. When you speak of a tool, what do you have in mind?

A. It might be tools from certain machines. Of course, we don't know where they come from nor do we question where they come from.

Q. Just so we will know about this, what is a tool, in automotive parlance?

A. Tools can fit in lots of categories. Parts might come to us called a tool that might have come from a fixture somewhere which might be badly worn and which they want built up. That, of course, comes to us as a tool. We have no way of knowing where it comes from: it just comes to us as a tool order.

Q. What I have in mind, Mr. Traen, is this, are these tools used to machine parts of the engines, or what is

the purpose of having this tool? Do you mean, cutting tools?

A. No, they are not cutting tools. They may be parts of fixtures and they come to us under a tool order for a chrome buildup.

Q. When you speak of fixture, do you mean a fixture used on an assembly line?

A. Well, I don't know. They come all torn down, just parts of the fixtures. We don't know where they come from.

Q. (By Mr. Dahling) Does this material come to you? Well, we will take these connecting rods and the
429 parts you polish. Does that come to you on an assembly line, or how does it reach you?

A. The material is brought to us by truck.

Q. And are a certain number of pieces brought to you each shift?

A. Yes.

Q. By the way, what shift do you have charge of?

A. The night shift.

Q. Is there another foreman on the other shift?

A. Yes, sir.

Q. And you have some of these parts to polish, we will say, on your shift, is that true?

A. Yes.

Q. Now, if you did not secure the proper quantity, would that have any effect upon production?

A. If the proper quantity was not delivered to me?

Q. Yes. If you did not deliver the required production in any one day, would that have any effect upon any of the other departments in the Company?

A. Yes, sir.

Q. In other words, there are a large number of departments, aren't there, Mr. Traen?

A. Yes, sir.

Q. In the Packard Company?

A. Sure.

430 Q. And those departments are all inter-related and if one falls down it might stop all the rest of them?

A. It would only affect that particular part they are working on.

Q. But if you did not get out enough crankshafts for these engines, it would stop the assembly line of engines, would it not?

A. Yes, because the assembly line would be affected by crankshafts.

Q. And that would reduce the production of engines by the Packard Motor Car Company, wouldn't it?

A. Yes.

Q. So that it is important that you see you get your allotted production out each day?

A. Yes.

Q. Now, it is also very important that your production be up to quality?

A. Yes.

Q. You have to get by an Army inspection, as I understand it?

A. Yes.

Q. Is that inspection in your department?

A. No. We have one inspection before it gets to the Army inspection.

Q. Who is in charge of that inspection?

431 A. There is what is known as a Packard inspection.

Q. So that when you complete the polishing, it goes to the Packard inspection and then to the Army inspection?

A. Yes.

Q. What happens if the particular part is not passed by the inspectors?

A. If it is rejected, it comes back to us.

Q. And then it has to be worked over again?

A. Yes.

Q. Of course, if you had a lot of rejections, that would mean that the work of your department would be slowed up, wouldn't it?

A. Yes.

Q. And that again might affect the production of these engines that Packard manufactures?

A. Yes.

Q. And those engines are manufactured, are they not, for the Army and Navy?

A. Yes.

Q. Now then, as general foreman, Mr. Traen, you have to plan your work, do you not, so that you can get it out according to schedule?

A. The schedule is planned for us.

Q. Yes. You receive this schedule and that schedule sets forth what you are supposed to produce in your
432 department, doesn't it?

A. Yes.

Q. What do you do to bring about that production?

A. When I receive the schedule, then I must study the time on the particular scheduled part to see how much manpower I am allowed to produce a certain amount of parts for so many hours.

Q. Well, you say that you study the time schedule. Do you mean the time in which—

A. (Interposing) The time study.

Q. I do not understand what you mean by "time study."

A. Do you want me to explain the time study?

Q. Yes.

A. A part being produced in a department is always time studied by the time study department. That is to say, the amount of parts each man can produce in a certain amount of time.

Q. And if you have so many parts to produce, then you would feel that you would have to have so many men to produce them?

A. That is right.

Q. After you have studied that time schedule, what do you do next?

A. After studying the time schedule, the time study schedule,—that in turn tells me how many men I
433 will need on the job to produce the required amount of production.

Trial Examiner Jaffee: Then it is just a matter of arithmetic?

The Witness: Yes, that is what it is.

Q. (By Mr. Dahling) Are some of the men you have more efficient than others?

A. Yes.

Q. Could they produce more than the others might pro-

duce or do you just require each man to get out a certain number of parts?

A. Each man is required to produce the amount of parts.

Q. And that does not make any diffe ence whether some have greater ability than others and could produce more? They produce a certain amount during a shift?

A. That is right.

Q. If you find that you have not enough men to perform the job, what do you do?

A. Then I request from the superintendent for more help.

Q. And you make out some sort of form?

A. Yes, we have a request for additional help form that we make out.

Q. What is the usual reception given to that form when you send it in?

A. When we send the form to the superintendent we must explain why we need additional help, and if
434 he so approves and signs his name to it, it is forwarded to the division manager.

Q. And then the division manager supplies you with that additional help?

A. I know that he sends the requisition to the employment department and they supply the help.

Q. And after you then have the number of men you need in your department, what do you do about arranging them?

A. When the required number of help comes in a department, why, we turn them over to the assistant foreman and he in turn places the men on some particular job where the required parts are needed.

Q. Then each man does not perform an identical job?

A. No, not necessarily.

Q. There are different types of jobs in the department?

A. That is right.

Q. And you have to select the men that are capable of doing this particular job, do you not?

A. Well, we have no way of knowing when a new man comes in, what his ability is. We have to put him on a job and find out.

Q. We will get to that later, Mr. Traen. Now, what do

you do if you find that these trucks are not coming through with the material on them that is to be polished?

A. Well, when the material does not come through,
435 I call the foreman in charge of the trucking department or stock department and relay a message to him.

Q. And you ask him to get it through to you to keep your production up?

A. Yes.

Q. Now, after you have completed your operation—rather, after your department has completed the operation on these parts, what do you do then?

A. After the operations are completed if they are passed through inspection and okayed, then I am all done with it.

Q. Do you then see that they are trucked to the next operation?

A. No, I don't. That is up to the foreman in charge of the trucking department.

Q. However, if it accumulated, you would call again to get them out of your way?

A. Certainly.

Q. In connection with these polishing jobs and also with the plating jobs, do you work according to a certain specification?

A. In some jobs—on some jobs we do.

Q. You are required to meet certain specifications?

A. Yes.

Q. On your polishing jobs, what would the specifications be? Would it have to have a mirror-like surface,
436 or what is the rule?

A. Well, the polishing job that we do now is more or less of a rough polishing job. The actual fine polishing has been done away with.

Q. That has been done away with at the present time?

A. To a large extent, it has.

Q. Did you originally have a fine polishing job on these parts?

A. Yes, sometime ago.

Q. And it was found not necessary? Was this change made to increase production?

A. It was found unnecessary, as I understand it. I do

not know but I just got the instructions that we could cut that fine polishing out and that is what we do.

Q. Even so, it has to be polished down to a certain point, I take it?

A. Yes.

Q. And it is your responsibility to see that that job is done and properly done?

A. Yes.

Q. Now, if you found that a number of these parts were coming back to you because of failure to pass inspection, what would you do about it?

A. In all cases where we find rejected parts, we always—

437 I always consult with my assistant and try to inquire as to where the particular parts came from or who produced the particular parts. Then, in turn, we discuss the flaw with the man who produced the parts and try to point out to him where he was wrong.

Q. When you say you discussed that with your assistant, you mean the assistant foreman in your department?

A. Yes.

Q. Then you go to the man himself with the assistant to discuss the reason for the part having been rejected?

A. Yes.

Q. Of course, if a large number of parts are rejected, that increases the cost or might increase the cost materially, Mr. Traen?

A. Well, it would. I would have no way of knowing. I do not know just what the cost of that material is. I imagine it would increase the cost.

Q. And it would really be your duty, then, to see that there were just as few rejections as possible, would it not?

A. Yes.

Q. And your one purpose, rather, one of your purposes would be, of course, to keep the cost down?

A. My one purpose there is to do a good job, and if that is doing a good job, that is what I want to do.

Q. In doing a good job, you would, of course, keep

438 the cost down?

A. I would keep the scrap down as low as I can.

Q. Now, we will say you send for these extra men you may need some morning, and you look them over, you say,

and then you put them to work and you find that a couple of those men cannot produce, they do not know anything about the job, what do you do?

A. If we have individuals who cannot meet production as to quality and quantity, there is an agreement with the rank and file organization that we can give them what they call a reasonable length of time for a tryout, and if these people fail to meet the requirements in that reasonable length of time, we refer them back to the employment office.

Q. And you ask to have them taken out of your department?

A. We request that, yes.

Q. During that training period, your assistants train these people?

A. The leaders in the department and the assistant foreman.

Q. And that assistant foreman does this job at your direction, I take it?

A. Yes.

Q. Do you ever give a hand on that sort of thing?

A. No, I don't have to do that.

Q. Now, in connection with this polishing and plat-
439 ing, I presume that you use certain tools or fixtures?

A. Yes, we use polishing wheels.

Q. Polishing tools?

A. Polishing wheels.

Q. Is that a tool with emery on it, or is it some other type of apparatus?

A. It is a tool with emery on it.

Q. And they hold the part to the emery wheel and that brings about the polishing?

A. That's right.

Q. It is necessary to see that these tools and fixtures are maintained in good working order, is it not?

A. Our emery wheels are shipped out daily to a room where the emery is put on and the wheels are put in good shape.

Q. And if any defective wheels should come in, of course, it would be up to you to see that they were not put on the machines and used, would it not?

A. If defective wheels are sent to us, the polisher, himself, will never put one on.

Q. What happens to that then?

A. He cleans the wheel off and sends it back up for remounting.

Q. Does he send that himself or is that called to your attention or your assistant's attention?

A. If it happens too often, it is called to our attention.

Q. What do you do then?

440 A. We, in turn, contact the foreman in charge of the room fixing the wheels and explain that such a condition does exist.

Q. In that connection, it is, of course, necessary, is it now, that these tools be properly used?

A. Yes.

Q. If they are not properly used, why, of course, you would wear them out too rapidly, particularly your emery wheels?

A. Yes.

Q. Would it be your duty or the duty of your assistant to check back to see that you did not run up the cost by using too much material?

A. Well, that's something, on these particular wheels having experienced polishers, we don't run up against that.

Q. That is, when you have experienced polishers, you have no trouble?

A. That's right, and I have experienced polishers at the present time.

Q. If you got a new man on the job, one of your duties would be to see that he did not destroy tools?

A. If a worker works in such a way as to destroy tools, why, he don't do a good job.

Q. You are interested, are you not, in keeping costs in your department down?

441 A. I am interested in turning out a good job.

Q. That did not answer my question. Are you not interested in keeping the cost of your department down?

A. Well, the cost of the department, of course, is something I very seldom see. The cost of any one item I very seldom see.

Q. That may be true, Mr. Traen, but you still have not

answered my question. Do you or do you not have interest in keeping the cost of your department down as low as it can be efficiently kept down for the benefit of the Company and for the benefit of the taxpayers today?

A. Yes, as I said before, efficiency is one of the things, and efficiency, I imagine, comes into that.

Q. You believe your efficiency will keep these costs down?

A. I believe so.

Q. If it is a question of efficiency, efficiency against cost, you would go for efficiency first?

A. Well, I imagine the efficiency directly affects the cost.

Q. Now, I believe you testified that you considered it your responsibility and duty to Management to eliminate scrap, did you not?

A. Yes.

Q. Where, in your department, would you have scrap?

442 A. Well, I may have scrap parts in case an operator got a little careless and possibly ground a part down under size. I would have scrap then.

Q. You have to keep constantly putting calipers, or measuring apparatuses, on these parts to see that you do not cut down below the specifications?

A. The operators have specifications for their work.

Q. I suppose you could also have scrap in your plating department?

A. Yes, it is possible.

Q. Those plating materials are quite hard to get at the present time, are they not?

A. Yes, at times we find them hard to get.

Q. And so you operate efficiently, I presume, but you also see to it that you do not have too many men in your department, is that correct?

A. The man load is figured, as I said before, according to the time study, and we are allowed a certain amount of men to produce a certain number of parts.

Q. If you have more men than that for some particular reason, you would request a removal, would you?

A. We would request a removal, yes.

Q. Now, when these men are sent to you, we will say, we will say you requisition some men for the job, do you talk with them before you put them on the job?

443 A. Yes.

Q. And knowing the requirements of the job, you size up these men to see what sort of a job you think they would do?

A. I talk to them and try to inquire as to their past experience.

Q. You know what type of experience is necessary for the work in your department and the various jobs and it is your idea to select the right man for the right job, is it?

A. About the only inquiry we can make, as far as my department is concerned, if an employee comes in, I can inquire as to whether he had any experience in that particular line of work.

Q. If he has had no experience in that particular line of work, you conduct your inquiry as to what types of work he might have done, to see if he might fit into any other operation you have?

A. We find, as a general rule, when the employment department sends these people in as polishers, we find they have had some experience.

Q. But even so, I suppose some of the men that come in would work better on one type of job than on another type in your department?

A. That could be possible, but we don't know that

444 until we find it out.

Q. But when you do find it out, you exercise your discretion and judgment in moving them around, do you not?

A. That is right.

Q. Now, when these people come in—I believe you said you put them on the job—but are they given instruction on the job?

A. Yes.

Q. And I believe you used the word leaders, did you not?

A. Yes.

Q. Where do these leaders fit in, are they below the assistant foremen?

A. Yes.

Q. Are they directly responsible to him?

A. To the assistant foreman?

Q. Yes.

A. Yes, sir.

Q. In connection with the instruction, is he the chief professor?

A. You mean the leader?

Q. Yes.

A. The leader does the instructing?

Q. Subject to the supervision of the assistant foreman?

A. Yes, sir.

Q. Now, what do you do, we will say, in the event you have a man who is constantly absent?

445

A. If a man is constantly absent, why, we take his record and send a query through to Labor Relations notifying them of this man's bad record and ask for a disposition on it.

Q. Do you ever recommend that these men be taken out of your department?

A. We have recommended it.

Q. Have you ever recommended a discharge in a case of that sort?

A. The recommendation goes directly to Labor Relations.

Q. But I mean, have you ever made such a recommendation?

A. Oh, yes.

Q. And have your recommendations been carried out by Labor Relations?

A. Not always, by no means.

Q. Have some of them been carried out?

A. After they had an extended hearing.

Q. Now, you talk about extended hearings. Why are these hearings held, Mr. Traen?

A. Well, I imagine the hearings are held to see if the parties are guilty as charged.

Q. These hearings are held because they are required to be held under the UAW-CIO contract, are they not?

A. Yes, there is such a clause in there.

Q. Yes. You know that to be a fact, do you not?

446 A. Yes.

Q. And if the steward does not agree with the recommendation you make, a hearing can be held, is that correct?

A. That is correct.

Q. You have found, have you, that sometimes the Labor Relations Department does not agree with you?

A. Often.

Q. Are you of the opinion that you were one hundred per cent right in all those cases?

A. Well, I wouldn't say one hundred per cent right, but I certainly try to practice good judgment and when I make these recommendations, to my mind, there is no shadow of doubt.

Q. But you appreciate the fact that other people might put a different conception upon the facts in the case?

A. That is possible.

Q. And you do not believe that Labor Relations is disagreeing with you because they do not like you?

A. No, I don't know whether they like me or not; I don't ask them.

Q. I mean, that is not your feeling, that they disagree with you for that reason?

A. There may be a lot of reasons why they disagree, and I don't ask them why.

Q. They may have a perfectly good reason for

447 disagreeing with you, is that not correct?

A. That is possible too.

Q. Well, we will say a man comes in your department and he has been drinking, what do you do?

A. If a man has been drinking or if he comes in drunk?

Q. Let us say he comes in drunk.

A. If an individual comes in drunk, we ask the guards, the plant guards, to remove the individual.

Q. Do you make any report on that?

A. Not necessarily.

Q. But you could make a report, could you not?

A. I could make a report to my superior.

Q. You could accompany that report with a recommendation as to the discipline, could you not?

A. Yes.

Q. And you have, have you not?

A. Yes, I have.

448 Q. Well, let's take the case of workers in your department getting into a fight, what action do you take about that when that happens?

A. The workers get into a fight in the department? There is a defined penalty set for such violations.

Q. That is set by management, is it?

A. Yes.

Q. What is that penalty?

A. At the present time I think it is three days off—three days off and then there is another penalty of two days off or something like that.

Q. What do you do when you discover these men fighting after you have stopped them from fighting? Do you recommend any disciplinary action?

A. After that we do make a recommendation to the Labor Relations office.

Q. If the steward agrees with that recommendation is it necessary for a foreman to send it up to the Labor Relations office?

A. If the steward agrees with the recommendation the penalty goes into effect.

Q. And that is the end of the case?

A. Yes.

Q. That is also the situation in connection with these other disciplinary measures you might use, if the

449 steward agrees with them, and if it is a question of days off and that sort of thing, it automatically goes into effect, is that the fact?

A. Not always.

Q. You mean that there can be an appeal by the worker beyond the steward?

A. Yes.

Q. And that is also covered by the contract with the UAW?

A. Yes, I believe they appeal to a higher office in the Labor Relations office.

Q. So that the principal reason why your disciplinary measures are not carried out would be that the workers may have a right of appeal under their UAW contract?

A. They do have a right of appeal.

Q. And if it was not for that, however, these penalties of days off for fighting and that sort of thing, would be automatically placed in operation?

Trial Examiner Jaffee: You mean if the steward agreed?

Mr. Dahling: Yes.

Q. (By Mr. Dahling): If there was no contract covering it. The point I am trying to make is that Labor Relations are not holding up the foremen on disciplinary penalties involving days off. They go through au-

450 tomatically unless they are held up because of a union contract. Isn't that true?

A. Not always.

Q. What happens in those "not always" cases?

A. There are many times when requests are put in of that type to Labor Relations, and although you might attempt to hear the case, oftentimes it is put off as much as thirty days before you hear any more about it. In fact, you forget about the case before they are again called to your attention.

Q. It is put off by whom?

A. I don't know.

Q. Who are those cases between?

A. Labor Relations and the rank and file representatives of the Union.

Q. Of the Union?

A. Yes.

Q. What happens if you find people gambling in the department?

A. Once again there is a set penalty set by management for any individual caught gambling.

Q. What is that penalty?

A. I think it is three days off.

Q. And you automatically assess that penalty against the people found gambling, don't you?

451 A. We send a query through the personnel office.

Q. When you say query, what do you mean by that?

A. A request for a particular penalty being applied.

Q. Isn't it a fact that under the form you apply the penalty and make no request at all?

A. No, we must make a query, there must be a query.

Q. In other words, under the form for gambling you have to request that the penalty be applied?

A. As set, yes.

Q. You do not apply it yourself?

A. No, that is a set penalty.

Q. Now, in connection with grievance matters, which the workers might bring up, where do you, as general foreman, stand in that picture?

A. The grievances, I would say, not concerning Company policy, are generally brought to the foreman's attention.

Q. Now, you say "Company policy." What do you mean by "Company policy", Mr. Traen?

A. Well, such as hours worked, rates of pay or policies that might affect other departments than your own. That I understand is set by management.

Q. Those are set by management but you, as a matter of fact, do carry a lot of the policies of management, do you not?

A. Meaning what?

452 Q. Well, isn't it a policy of management; we will say, that men who are caught gambling be given three days off? Wouldn't that be a policy of management?

A. I do not know that you could call that a policy. I think it is an agreed fact between the rank and file officers and management.

Q. Well, it is part of your duty, is it not, to keep your department clean so that it will properly function?

A. Yes.

Q. Would you say that that is a policy of management or not, to keep the department clean?

A. Well, I do not know whether you would call it a policy or not. It is certainly for the good of the men in the department and your own good. It pays to keep your department clean.

Q. I want to know what you mean by "policy," Mr. Traen. It would be the policy of the Company, would it

not, to make these engines for the government and see that all of those parts are properly machined and the parts you are working on are properly polished?

A. That again is not a policy, it is an absolute necessity.

Q. That is true.

A. Before they can sell that part.

Q. Do you differentiate between a rule and a policy,
453 Mr. Traen?

A. There might be some differentiation, yes.

Q. Wouldn't the rule ordinarily be established to carry out some policy?

A. Possibly, yes.

Q. So that in carrying out these rules, if you care to call them that, of management, you as a foreman are carrying out the policy of management, are you not?

A. We may carry it out as they set it down.

Q. You do not make the policies, you mean?

A. No, we follow the policies, to a certain extent.

Q. The policies of management, that is. It is a part of your duties to carry out that policy, is it not?

A. Yes, to follow the policies as they set it for us.

Q. You as a general foreman, can make recommendations to your manager or the higher ups in the line, can you not?

A. Regarding what?

Q. Regarding the improvement in the operation of your department, for instance?

A. Well, we can make recommendations for certain improvements, yes.

Q. And you could recommend that an operation be carried through in some manner other than that which it is being carried through and which in your opinion
454 would be more efficient, isn't that true?

A. No.

Q. You could not make such a recommendation?

A. No, that is generally taken care of by a department.

Q. I asked you if you could make such a recommendation?

A. I could make it but it does not necessarily mean it would be acted upon. That function is carried by another department.

Q. But you could make recommendations which in your opinion would increase the efficiency of your department?

A. Yes.

Q. Have you ever made any such recommendations?

A. Yes, from time to time.

Q. And some of those recommendations have been carried into effect, haven't they?

A. Not until after the department directly connected with that particular phase of the work had come down and discussed it with myself and the superintendent.

Q. After it was discussed by the superintendent and you and the department heads, some of them were placed in effect, were they not?

A. Once in a while, yes.

Q. Is there any question in your mind that with your long experience here that you have made some recommendations that were eventually carried into effect?

455 A. There have been some carried into effect.

Q. As a matter of fact, after this change has been made it becomes the policy of the Company to do the job in that way, doesn't it?

A. Well, I do not know where you connect policy with anything like that. I cannot understand that.

Q. At any rate, it becomes the manner of handling the operation of the Company after that time?

A. After the time—that is the way the operation is done.

Q. You, of course, by your recommendations, were responsible in changing them over from the way they were operating?

A. I just suggested it.

Q. You made these suggestions and your suggestions were carried out?

A. Carried out by other parties.

Q. That you say, however, is not, in your opinion, a change in the policy of the Company?

A. No, I do not think so. It is just a change in the way the work is going to be done or the way in which the operation is going to be followed at times.

Q. Mr. Traen, will you just list for us some of the things that you think come within the definition of policy?

In the third place, I think we are spending a good deal of time on what we might term "policies" for a minute. I can easily see why people might apply different definitions to it, although they are thinking about similar facts. For instance, it might be, in one sense, said to be the policy of the Company to keep the plant clean. It
463 might be the particular "policy" of the sweeper-upper to apply his broom east and west rather than north and south, or, in another sense, you might say it is his rule, practice or his custom. I should suppose, using the rather extreme example I just referred to, that we should not properly dignify that particular operation to describe a policy. But, personally, I do not think it makes much difference whether we call it policy or something else, so long as we agree on the primary facts.

I am wondering whether or not it pays to spend so much time on questions which involve adjectives, or questions which involve inferences to be drawn from evidence, if, to begin with, we can agree on the primary facts. I do not ask you now to indicate any agreement on what I have said; I merely throw it out to you gentlemen with the hope that some way might be found to shorten the rest of this hearing on matters concerning which I anticipate there may not be much dispute at all.

We will adjourn until nine-thirty tomorrow morning.

(Whereupon, at 4:35 o'clock p. m., Wednesday, December 20, 1944, the hearing in the above-entitled matter was adjourned to Thursday, December 21, 1944, at 9:30 o'clock a. m.)

464 Room 737 Federal Building,
Detroit, Michigan
Thursday, December 21, 1944.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 A. M.

Before: Samuel H. Jaffee, Trial Examiner.

466 PROCEEDINGS.

Trial Examiner Jaffee: Gentlemen, the hearing is in order. Mr. Traen, will you take the stand.

PROSPER TRAEN

resumed the stand, was examined and testified further as follows:

Cross-Examination (Continued).

Q. (By Mr. Dahling): Mr. Traen, you have testified that you are a general foreman?

A. Yes, sir.

Q. And I do not believe we went into your duties and responsibilities in that connection. I would like to go into that briefly this morning. You as a general foreman have charge of just one department, is that right?

A. S. D. E.

Q. And other general foremen have charge of more than one department?

A. They may have some that have charge of more than one.

Q. And you do not know of that situation, however?

A. No, I do not. I wouldn't know the departments, or anything like that.

Q. You have under you just one assistant foreman?

A. Yes, sir.

Q. Do you know whether other general foremen have under them and supervise more than one foreman
467 or assistant foreman?

A. They do.

Q. And in some cases they may have a number of general foremen and a number of assistant foremen, is that right?

A. I didn't get that.

Q. In some cases the general foreman may have under him a number of foremen and a number of assistant foremen under his supervision?

A. Yes.

Q. As a general foreman, of course, it is your responsi-

A. What I think comes under the definition of the policy?

456 Q. Yes. What you have in mind as coming within the definition of policy?

A. As I said before, I made the statement before what I thought policy was, such as fixing the rate of pay for employees, setting the hours of work or changing certain rules that affect more than your own department. That is the policy of management. For any rule put into effect that affects all the departments throughout the plant is a policy that is set down by management.

Q. And those rules would be principally, as I take it, fixing rates of pay and setting the hours of work. That would be it generally, and perhaps covering the entire operation of the Company?

A. Yes.

Q. Do you have any more specific rules in mind?

A. No, there may be more but I do not have any in mind right now.

Q. Do you, in connection with the operation of your department, encourage the workers to make suggestions as to the manner in which the department could be improved?

A. I do not have to do that because there is a plan in effect there under the "Work to Win Suggestion Program." That takes pretty good care of that situation.

Q. If one of your workers came up and had an idea

457 about improving the operation of your particular department, I presume you would talk to him about it?

A. If he came to me I would talk to him. I will talk to anyone that comes to me.

Q. If you thought it was a good idea you would pass it on up to the next level of supervision above you, wouldn't you?

A. Under the present plan you put it in the "Work to Win" suggestions.

Q. By the way, who would be the superior to you, the person you would report to?

A. Mr. Miller is the one I report to.

Q. What is the title of his position?

A. I understand he is assistant manager now. I am not so sure of that.

Q. When you say "assistant manager," assistant manager of what?

A. Assistant division manager.

Q. Your division is the F. F. Division?

A. It is the "S" Division now.

Q. And he is the assistant manager of that division?

A. Yes.

Q. Who would there be next above Mr. Miller?

A. The division manager, Mr. Winfield.

Q. Following that up the line who would be next above Mr. Winfield?

458 A. I understand Mr. Riefel.

Q. And Mr. Riefel has what position?

A. I understand he is manager over the Y and S Division.

Q. That would be the car and Marine division, would it not?

A. Yes.

Q. Then, if you know, who would be next in line above Mr. Riefel?

A. Why, I think it goes up to the vice-president from there.

Q. If you don't know, I will not continue to ask you about that.

A. It does go up to the vice-president from there.

Q. When these workers come to your department, I believe you stated that they all have been classified. What do you mean by that?

A. They come in under certain classifications.

Q. What classifications would they come in your department?

A. For instance, the polishers come under the classification of C. F. 102, in my department.

Q. What does that mean?

A. That is just a figure for that type of work. In
459 other words, that is the symbol they use for that type of work.

Q. Having that classification, they are paid a certain rate because of t) classification?

A. Yes.

Q. Could you use those people for anything else except polishers?

A. No.

Q. Is there another classification higher than that in your department?

A. No.

Q. Is there a classification lower than that in your department?

A. On that same type of work you are talking about?

Q. On any particular type of work.

A. I beg your pardon, I thought you meant in the polishing.

Q. You have reason to believe it that way, because of the way the question was stated. What I am getting at is that you have in your department people who have lower classifications than these polishers?

A. Yes.

Q. Polishers have a rather high classification, have they not?

A. Yes.

460 Q. What have you to do with the recommendation of changes in classifications?

A. I can recommend a change in classification. There is a regular form that such recommendations come on.

Q. Have you recommended such changes?

A. Yes.

Q. As a matter of fact, you consider it a part of your duty to make such recommendations, do you not?

A. Whenever the labor loads so require that we have to change down to a certain amount of people due to production reduction, in the force or production, then if these people must go down to a lower classification, why, it is of course up to us to put in the request.

Q. Yes, but how about recommending that they be given a higher classification?

A. Yes.

Q. Did you ever recommend that a worker be given a higher classification?

A. You can recommend higher classifications if the need is there for an individual in that particular job.

Q. And in connection with that recommendation you look over the workers in your department and exercise your best judgment and discretion as to which man should receive that recommendation, do you not?

461 A. No, I think you better talk it over with the steward if you want to live right with the people.

Q. Having that in mind, you do exercise your judgment and discretion in picking out the man which you think should be reclassified and have his classification raised, do you not?

A. No, you generally try to—they generally try to apply that to the older men in the department.

Q. In other words, you would recommend the upgrading of an older man, even though he was only half as efficient as a younger man, in your department?

A. You never know how efficient a man is going to be on a certain job unless you try him.

Q. In other words, if you are going to classify a man for a job in your department and are going to recommend a man for a job in your department, you have to have some idea of what he can do?

A. Yes.

462 Q. And does that give you some idea of what the man might do on another job?

A. Sometimes, yes.

Q. As a matter of fact, it is part of your job to be able to do that, is it not?

A. Yes.

Q. That is what you are being paid for?

A. Yes.

Mr. Dahling: May I make a motion that we adjourn at this time, Mr. Examiner?

Trial Examiner Jaffee: Before granting that motion, I would like to make two or three observations, if I may.

In the first place, I have the feeling that in a large part there may not be much dispute about the facts, although there may be considerable dispute about the inferences to be drawn from the facts.

In the second place, it seems to me it is possible, in particular instances, for you gentlemen to agree upon the primary facts.

bility to see that your particular department functions properly?

A. Yes.

Q. It would be the duties of any general foreman to see that his department or departments function properly?

A. Yes.

Q. Of course, as a general foreman you are responsible for the production of your department, are you not?

A. Yes.

Q. And other general foremen who may have several departments would be responsible for the production of their departments?

A. That is right.

Q. Do you advise with your superior—by the way, who is your superior? You testified yesterday but I have forgotten.

468

A. Mr. M[redacted].

Q. What is his position?

A. I understand he is the assistant division manager.

Q. And also in connection with your Labor Relations cedures?

A. Yes, sir.

Q. And also in connection with your labor Relations questions in your particular department?

A. Yes.

Q. And that would be the duty generally of general foremen to advise with their superiors or superior in connection with those matters, would it not?

A. Yes.

Q. I believe you testified that as a general foreman you assist the assistant foreman who is under you in connection with his problems and advise with him?

A. Yes, sir.

Q. And that would have to do with the safety and cleanliness of the department and the general functioning of the department?

A. Yes, sir.

Q. I assume also that that would be the duties and responsibilities generally of all general foremen in the Packard plants?

469 A. Yes, sir.

Q. If your assistant foreman decides that he needs more men for the operation of his plant, do you pass upon his requisition?

A. We discuss the need for them together.

Q. It is you who eventually decide, however, as to whether or not you do need more men?

A. If I need more men?

Q. In the final analysis, it is your decision, however. You advise with him and you make the decisions yourself, do you not?

A. Yes, I make the recommendation.

Q. Do you know what compensation is paid to the highest paid employee in your department?

Mr. Nelson: You mean under his supervision?

Mr. Dahling: Yes, I assume that would be under his supervision.

The Witness: Which would be the assistant foreman?

Q. (By Mr. Dahling): Yes. Do you know his salary?

A. $1.46, I think it is, $1.46.

Q. What is the hourly rate of the highest paid worker in your department under your supervision?

A. $1.35.

Q. Mr. Traen, when you come on to your shift or when you start your shift, whatever you call it, do you
470 have instructions left by the general foreman for you, the foreman who preceded you?

A. Well, we may have instructions if we run the same part that he runs and if they have any trouble during the day he may leave word as to what trouble he has been having during the day.

Q. And possible suggestions as to corrections?

A. Possibly.

Q. And do you do the same thing at the end of your shift? Do you leave memoranda for him as to the problems that have arisen and might arise in his shift?

A. Yes.

Q. Of course, you as a general foreman, could recommend the promotion of your assistant foreman?

A. The promotions of assistant foreman must be discussed with my superior.

Q. But you could recommend his advancement if you felt he merited that?

A. Yes, I would have to discuss it with him, though.

Q. And your recommendation would have considerable bearing on the matter?

A. It might have.

Q. By the same token I presume you could request his discharge if you felt he was not efficient or warranted discharge?

471 A. I could request it.

Trial Examiner Jaffee: I do not know how much value a mere statement that a person could do something means. I suppose I could make the request also.

Mr. Dahling: I was going to follow that with another question, Mr. Examiner. I believe the witness testified his recommendations have been followed by the upper supervision.

Trial Examiner Jaffee: Have you ever recommended a promotion of an assistant foreman?

The Witness: Yes, sir.

Q. And your recommendations are considered by your superiors, are they?

A. In this particular case, it was.

Q. It was. Now, yesterday we were discussing your authority to discharge a worker, and I believe you stated that all you could do was recommend the discharge; is that correct?

A. That is right.

Q. Now, as a matter of fact, Mr. Traen, if you discharge a worker you first have to give twenty-four hours notice, do you not, under the Union contract, the CIO contract?

A. That is right.

Q. And you give that notice to the chief steward of the Union?

472 A. That is right.

Q. Now, if the chief steward of the Union does not object and asks for a hearing, is not that man automatically discharged?

A. Not necessarily.

Q. You mean that someone else could overrule your discharge; and who would overrule your discharge?

A. Labor Relations, upper Labor Relations; it has happened to me.

Q. Well, has it ever happened except in case there was a hearing which was asked for by the Union?

A. There is always a hearing.

Q. Well, if the Union did not object to the discharge of the man there would not be a hearing, would there?

A. You asked me if the discharge was agreed to by the steward, is that right?

Q. By the steward, yes. Then there would not be a hearing, would there?

A. Not necessarily. As I said, there has been hearings after the steward has agreed to it.

Q. Well, that is because the man has gone to the district steward of the Union and asked for a hearing, isn't that true, or to the plant committee of the Union?

A. Yes.

Q. But those hearings have been brought by the man
473 going to his Union, and not by management, isn't that correct?

A. I believe so, yes.

Q. So then, if you discharge a man and the Union does not ask for a hearing, that discharge goes through, does it not?

A. Yes, if the steward agrees to it and nobody asks for a hearing, it does go through.

Q. And you have had a number of cases where you have discharged employees where you have not had a hearing, haven't you?

A. No, I have not had any number of them.

Q. No number of them?

A. No.

Q. But you have had some?

A. I had a few of them.

Q. And you also have had cases where a hearing is requested by the Union and the hearing has been held?

A. That is right.

(Thereupon the document above referred to was marked Company's Exhibit No. 2 for identification.)

Q. Mr. Traen, I show you a paper marked Company's

Exhibit 2 for identification, and ask you what it is, if you know?

Trial Examiner Jaffee: Is that supposed to be Com-
474 pany's Exhibit 2?

Mr. Dahling: Yes, Company's Exhibit 2.

Trial Examiner Jaffee: Well, that designation was previously used in connection with a paper called the Supervisor,—that would be No. 3.

(Thereupon the document above referred to was marked Company's Exhibit No. 3 for identification.)

Q. (By Mr. Dahling): I show you paper marked Company's Exhibit 3 for identification, and ask you what it is?

A. This is a query form, a clearance form, clearance query form, sent you and signed by myself and agreed to by the steward.

Q. Now, when you say a query, that is just a designation or a term that is used in Packard, isn't it, for a report? Would you say that another term for it would be "Report"?

A. Well, it is a notice that is sent through to the designated people on that report that such action is required or asked for.

Q. Yes. And you say that you have signed this query or report. That is your signature?

A. Yes.

Mr. Dahling: I will offer Exhibit 3 in evidence.

I have not had time to have photostatic copies made of some of these exhibits, and if admitted, I would therefore request permission to withdraw the original and
475 substitute photostats.

I will present the exhibit to counsel for the Petitioner for inspection.

Mr. Nelson: There is no objection.

Trial Examiner Jaffee: Proceed.

Mr. Karasick: May I see the document?

Mr. Dahling: Oh, I am sorry, I have not presented it to the attorney for the Board.

Mr. Karasick: There is no objection.

Trial Examiner Jaffee: It will be received.

Mr. Dahling: Exhibit 3, Mr. Trial Examiner, is dated October 3, 1944, it is from P. Traen to Mr. C. E. Williams.

Q. And who is Mr. Williams, Mr. Traen?

A. He is in the employment department.

Mr. Dahling: It is very short, and I would like to read it into the record.

Trial Examiner Jaffee: Very well.

Mr. Dahling: The query or report reads as follows (Reading):

"SDE-1547, Darrel B. Shelton is an habitual absentee. He was called into my office last week and warned regarding his attendance, at which time he was told that he would be given a twenty-four notice if he was absent in the future.

"On 10-2-44 he reported for work at 2 A. M. in a
476 very intoxicated condition, and, therefore, was sent home. The employee reported for work today and left his post without asking permission. As we cannot maintain efficiency with this type of employee, we are, therefore, waiving the customary twenty-four notice and clearing him from the SDE roll."

That is signed "P. Traen."

Q. And, Mr. Traen, there is another signature on Exhibit 3, after your signature. Can you identify that person?

A. Yes, that is William Bonkowski, the chief steward.

Q. So this is a case where a man was discharged by you and the chief steward agreed to the discharge, is that the case?

A. Yes, sir.

Q. And there was no hearing on this case, is that true?

A. No, sir.

Q. And the discharge went through automatically?

A. Yes, sir.

Mr. Nelson: Might it be stated in the record, Mr. Dahling, that you read only the body of the exhibit? There is no need to do it if you are going to offer it in evidence. There are other notations thereon.

Mr. Dahling: If you would like I will put them all in the record. It was just the body I have read. I
477 offered it and understood it has been received.

Trial Examiner Jaffee: Yes.

Mr. Dahling: May I have permission to withdraw the exhibit and substitute photostatic copies?

Trial Examiner Jaffee: Yes.

Mr. Dahling: Will you please mark this as Company's Exhibit 4 for identification?

(Thereupon the document above referred to was marked Company's Exhibit No. 4 for identification.)

Q. (By Mr. Dahling): Mr. Traen, I show you a paper marked Company's Exhibit 4 for identification and ask you what it is?

A. This is a query made out on the violation report from our plant guards. The violation report was a gambling charge. The gambling charge has a set penalty in the plant there. Here it is three days off. That, of course, we have to follow on our query and ask for that particular three days on that set penalty.

Q. As a matter of fact, you did not ask for it, you just gave him three days off, didn't you, Mr. Traen, according to that query?

A. On this query it appears Mr. Cussrow, our Labor Relations man, must have had a hearing on it before we could apply the three days.

Q. But at any rate if there was a hearing on it it would be because the Union had asked for that hearing?

478

A. Yes.

Q. Otherwise the three days would have followed automatically as given by you?

A. As set forth by the policy of gambling, that follows a gambling situation.

Q. By the way, your signature appears on Exhibit 4?

A. Yes.

Q. And it was prepared under your direction, I take it?

A. Yes.

Q. I notice that this one sentence, "This being your first offense you are, therefore, being penalized with three days off for this offense, December 4th, December 5th, and December 6th"—those are the dates which you designated as the penalty dates?

A. That is right.

Mr. Dahling: I offer Exhibit 4 in evidence.

Mr. Nelson: Have you shown who Mr. Cussrow is?

Mr. Dahling: The witness testified that Mr. Cussrow is

from the Labor Relations Department of the Company, and further that there was a hearing on this case requested by the Union. I offer Exhibit 4 in evidence.

Mr. Nelson: No objection.

Mr. Karasick: No objection.

Trial Examiner Jaffee: It is received.

479 (Thereupon the document heretofore marked Company's Exhibit No. 4 for identification was received in evidence.)

Q. (By Mr. Dahling): If there was a hearing held in connection with the penalty which was imposed as appears on Exhibit 4, it would appear therefore that at this hearing your directive was carried into effect?

A. Yes.

Q. They did not overrule you in this case?

A. No, not in that one.

Mr. Dahling: May I have this marked as Exhibit No. 5 for identification.

(Thereupon the document above referred to was marked Company's Exhibit No. 5 for identification.)

Q. (By Mr. Dahling): I show you a paper marked Company's Exhibit No. 5 for identification, Mr. Traen, and ask what it is?

A. This is another violation for an employee who had whiskey on his person, which was a violation of the Company regulations. It was requested that he get one week off for this violation. I believe there is also a penalty on that in the regulations.

Q. And your signature appears at the bottom of this exhibit?

A. Yes.

Q. And it was prepared by you or under your direction?

480 A. It was prepared under the direction of the superintendent.

Q. This one was prepared under the direction of the superintendent?

A. Yes.

Q. But you signed it?

A. Yes.

Q. And it arose in your department?

A. Yes.

Q. And you say there is a recommendation as I read this "As this is a violation of the Company regulations, we are hereby notifying you that you are to be sent home for one week." Is that right?

A. Yes.

Q. So this notice went to the man and he was laid off, is that right?

A. That is right.

Q. And you think there was a hearing on this?

A. There was no hearing on that case.

Q. You stated that this came through as a request from the superintendent?

A. Yes.

Q. And that was a direction to you to take action in this particular case?

A. Yes, the reason that came through the super-
481 intendent was because it was investigated by the plant guards. This individual who got the week off happened to be the chief steward.

Q. You mean the chief steward of the Union was guilty of this particular offense, Mr. Traen?

A. Yes.

Q. And you could not very well refer back to him for action by the Union?

A. It was referred back to him. You see his signature on there.

Q. And there was no hearing then?

A. No, sir.

Mr. Dahling: I offer Exhibit 5 in evidence.

Mr. Nelson: There are no objections on our part.

Mr. Karasick: No objections.

Trial Examiner Jaffee: It is received.

(The document heretofore marked Company's Exhibit No. 5 for identification was received in evidence.)

Mr. Dahling: Mr. Examiner, would you care to look at it?

Trial Examiner Jaffee: No, it is all right.

Mr. Dahling: Will you mark that as Company's Exhibit 6 for identification?

(Thereupon the document above referred to was marked Company's Exhibit No. 6 for identification.)

482 Q. (By Mr. Dahling): Mr. Traen, I show you a paper marked Company's Exhibit 6 for identification and ask you if your signature appears thereon and what it is.

A. This is a query asking the removal of a man who does not meet production requirements, and of course, affects the efficiency of the department; and the removal has been agreed on by the steward and by the head of the Labor Relations Department, at that time Mr. Watts; signed by myself.

Q. And you originated this query?

A. Yes. You have to originate those queries for the good of the department.

Q. And you say, however, that it is a request. Does that term appear anywhere on this exhibit?

A. It may not appear there, but nevertheless it is a request, signed by the personnel man on the bottom there that it has been okayed.

Q. Would that indicate that there had been a hearing?

A. It might indicate that.

Q. Well, was it necessary, if the Union did not object, that this should be approved unless you asked for the approval?

A. When Mr. Watts was there we did send all those queries down for his okay.

Q. But it was not necessary that you do that; there
483 was no company rule that required that?

A. We were required to do it at that time.

Q. Who told you to do that?

A. Our boss, our superior.

Q. Who was your superior?

A. Mr. Miller.

Q. Mr. Miller.

A. Yes.

Q. And when did he tell you to do that; what was the date, if you remember?

A. No, I don't remember the date.

Q. Is that rule still in effect?

A. No, there has been a change made in the Labor Relations.

Q. And to get this straight, that at the time Mr. Watts was there,—and this exhibit is dated, apparently it is dated June 29, 1944, or about that time; would you say that is correct?

A. It is kind of hard to see. That looks like 6-28-44. There is another notation on there. I don't know what that means.

Q. That would be in June of this year. Then in June of this year, according to your testimony, when you discharged a man, you referred it to Mr. Watts for his approval. Who was Mr. Watts?

484 A. He was a Labor Relations man on the night shift.

Q. And since that time, that procedure has been changed?

A. There have been changes in the Labor Relations, yes.

Q. And at the present time you do not refer these matters to Labor Relations if the steward approves?

A. If the steward approves,—there is a regular form that goes through Labor Relations, notifying them of the fact.

Q. But they take no action?

A. Not unless the action is asked for by the steward.

Q. And in this case, if the recommendation was needed in June of 1944, or the approval of Labor Relations, Mr. Watts actually approved, didn't he?

A. That is right.

Mr. Dahling: I offer Exhibit 6 in evidence.

Mr. Nelson: There is no objection.

Mr. Karasick: There is no objection.

Trial Examiner Jaffee: Received.

Mr. Dahling: Would you care to look at it, Mr. Trial Examiner?

Trial Examiner Jaffee: No, thank you.

(Thereupon the document above referred to was marked Company's Exhibit No. 7 for identification.)

485 Q. I now show you a paper which has been marked Company's Exhibit 7 for identification, and ask you if you signed this paper, and what it is?

A. This is the same type of a gambling violation, only in another form, that you had just a few minutes ago.

Q. And you signed this?

A. Oh, yes,—signed by myself and signed by the chief steward.

Q. And you assessed the penalty for the gambling?

A. The penalty was assessed as per the regulations.

Q. And the worker was given three days off?

A. Yes.

Q. And your statement on the exhibit in that connection is this: "He is being given three days off for this offense, effective 2-22 to 24"

Mr. Nelson: There is no objection.

Mr. Karasick: There is no objection.

Trial Examiner Jaffee: It will be received.

(Thereupon the document above referred to was marked Company's Exhibit No. 8 for identification.)

Q. (By Mr. Dahling) I show you, witness, paper marked Company's Exhibit 8 for identification, and ask you what that is?

A. This is a report from the guards, another violation of intoxication in the plant, and a recommendation that they be given a week off for this plant violation.

486 It appears that there must have been a hearing, according to this statement here that I see, by Mr. Youngblood, who was in the personnel office, and that the decision of a week off is changed and made into two days.

Q. Now, this query is one that was issued by you, Mr. Traen?

A. If I signed it, it was. My signature does not appear on there, although it is typed on.

Q. That is why I am asking you the question; I do not want you to accept it as your own, Mr. Traen, unless you can recognize it as having been prepared by you.

A. I believe, if I remember this case right, this happened on a Sunday night; I think it was a Sunday night that this happened on, that this violation was actually,—that the guards actually caught the gentlemen in this violation.

487 Q. But who would have typed your name on the query, Mr. Traen, don't you know?

A. The clerk could type my name on there. However, the E. T. behind my name designates the clerk. I don't know—I cannot place the letters designating who typed the query.

Q. Do you have sufficient knowledge of the incident to state that this query was prepared for you or under your direction?

A. The query was prepared by the clerk.

Q. And it was not prepared by you?

A. No.

Q. And you have no particular knowledge of the situation?

A. The only knowledge I have of the case in question is that it did happen on Sunday night. The violation was sent to us during the week and then, of course, the penalty was attempted to be assessed and as you notice there, it was changed by the personnel office.

Q. This would have been a form of query that would have been sent through on that type of offense?

A. Yes.

Q. In this case you say there was apparently a hearing and your recommendation was reduced from a week to two days?

A. That is right.

Q. In this query you state—or rather, it is stated, "for this plant violation, I recommend that he be given a
488 week off." The other forms we have here and the exhibits that have been admitted in evidence use different language. For instance, on Exhibit 4, the language is this: "This being your first offense, you are therefore being penalized with three days off for this offense." Why would there be a change in the language used in the two forms?

A. It often happens on who the particular clerk is who types it out. We may have a clerk who words a query different than others do although they might mean the same thing.

Q. It might be possible also that in certain cases you would merely recommend action to be taken.

A. We always recommend the action to be taken, regardless of what the query says.

Q. Well, Mr. Traen, in Exhibit Number 6, which has to do with a man named Joseph Whitehead, the query reads this way:

"This employee has not attempted to meet production requirements for several days and therefore, this is a 24-hour notice that he is to be removed from the S. D. E. roll."

You testified, I believe, that that is the one that was approved by Watts?

A. Yes.

Q. I believe you testified, Mr. Traen, however, that
489 at the present time if you send through a query discharging a man and the steward agrees, no one else is required to approve it.

A. Not unless the man takes it up to the higher official in his organization and then, of course, they have a hearing between the steward and myself and it goes through the regular procedure again.

Q. But again, that is because the Union asked for this hearing, isn't that true?

A. Right.

Q. If the Union did not ask for a hearing, the discharge goes through automatically?

A. Yes, it goes through the employment office and they clear the man out.

Q. Isn't that true with respect to any penalties which are assessed for gambling if there is no appeal by the Union, or rather, let me put it this way: If the steward approves, that kind of penalty is assessed automatically, isn't it?

A. Yes, there is a penalty—did you say for gambling?

Q. Yes, let us say for gambling.

A. There is a penalty for gambling of a regular three days off.

Q. You say it is a regular three days off? What if a man was caught gambling on two occasions? Is it still three days off?

490 A. I think the second offense is six days off.

Q. What if he was caught three times?

A. It may be a discharge. There is another item back there on the third time and I do not know whether another six days or a discharge is attached. I haven't the regulations here right now and I do not know just what it is. There are quite a few on there.

Q. In all of those cases—the one where you determined the fact of what happened and issued the query requesting a penalty, they go through automatically unless the Union objects and asks for a hearing?

Trial Examiner Jaffee: Just a minute.

The Witness: You recommend the penalty and then it goes through.

Q. (By Mr. Dahling) You say you recommend it? Who do you recommend the penalty to?

A. You recommend that that individual—this card may be pulled from the clock alley, and refrain him from coming in or you recommend to the personnel office, notifying them of the fact that this individual is being penalized.

Q. What I am getting at is when you recommend something there usually is another person concerned, you recommend to someone?

A. Yes.

Q. Who do you recommend a discharge to after the
491 steward, or rather, when the steward has approved it and there is no Union objection?

A. Well—

Q. (Interposing) Do you mean by "recommend" merely sending the notice through?

A. Yes, you send the notice through the employment office and they take the necessary steps to remove the man from the roll and do the actual clearing out.

Q. And that is what you mean by recommend?

A. That is right.

Q. They do not pass on the merits of the case once the Union has not asked for a hearing?

A. No, they remove the employee.

Mr. Dahling: Will you mark that as Company's Exhibit 9?

(Thereupon the document above referred to was marked Company's Exhibit No. 9 for identification.)

Mr. Dahling: I believe I offered Company's Exhibit 8 for identification in evidence.

Trial Examiner Jaffee: It is received.

Mr. Dahling: I am sorry, I do not wish to offer Exhibit 8, Mr. Traen did not sign that exhibit.

Mr. Nelson: I want it just the same. We will offer it if you do not. I would like to do it now while I am reminded of it.

492 Mr. Dahling: I have no objections. The only reason I did not offer it was because Mr. Traen was a little uncertain about the case and did not sign it.

Mr. Nelson: He knew the circumstances and we are agreeable to offer it if you will not do so.

Mr. Dahling: I am perfectly willing to offer it.

Trial Examiner Jaffee: It will be received.

(The document heretofore marked Company's Exhibit No. 8 for identification was received in evidence.)

Q. (By Mr. Dahling) I show you a paper, Mr. Traen, marked Company's Exhibit 9 for identification and ask you if this paper was signed by you and what it is.

A. This is the same type of violation I spoke about regarding the chief steward who had whiskey on his person, these two were together. (Indicating)

Q. This is what you would call a whiskey violation?

A. Whiskey on his person or whiskey while on Company property, there was a regulation on that.

Q. This was approved by the chief steward for the Union?

A. Yes.

Q. And therefore, it went into effect automatically?

A. Yes, it went into effect.

Mr. Nelson: This is exhibit 9?

Mr. Dahling: Yes.

Mr. Nelson: There is no objection.

492-A Mr. Karasick: I have no objection.

Trial Examiner Jaffee: It will be received.

(The document heretofore marked Company's Exhibit No. 9 for identification was received in evidence.)

493 Q. (By Mr. Dahling) Mr. Traen, I do not know whether you noticed or not, but I will state that

these exhibits that have been introduced running from Company's Exhibit 3 to Company's Exhibit 9, I believe, are all dated in 1944. They are typical, are they not, of the queries, as you call them, that are issued by you and other general foremen and foremen?

A. I do not know about the other general foremen.

Q. You have issued others of the same character from time to time?

A. From time to time I may have issued them.

Q. And these would be a good example of the various types issued by you?

A. Yes.

Q. And I presume you issued those over a period of years, have you not?

A. In one form or another, we might have over a period of years, since they were required.

(Thereupon the document above referred to was marked Company's Exhibit No. 10 for identification.)

Mr. Dahling: Did I offer Exhibit 9 in evidence? I am sorry, I have forgotten.

Mr. Nelson: I will agree that you did, and I said that there was no objection.

Trial Examiner Jaffee: It is already in, gentlemen.

494 Q. (By Mr. Dahling) Mr. Traen, in your testimony yesterday you said that it was one of your responsibilities and duties to request changes in classification. I show you paper marked Company Exhibit 10 for identification and ask you if that was signed by you, and what it is.

A. This is a request for change in classification from polisher to plater. The polisher's classification is known as C-102, and the plater's classification is known as CF-105; approved by the division manager and signed by myself, checked by the time study man, and agreed to by the individual or the employee in question.

Q. And this is the form that is used in case of a change in classification?

A. Yes.

Q. Or one of the forms?

A. That is one of the forms.

Q. And it was first signed by you, as I take it, then approved by the division manager?

A. That is right.

Q. And then it went through the time clock for the necessary adjustments of the record?

A. That is right.

Mr. Karasick: There is no objection.

Mr. Nelson: There is no objection.

495 Trial Examiner Jaffee: It may be received.

(The document heretofore marked Company's Exhibit No. 10 for identification was received in evidence.)

(Thereupon the document above referred to was marked Company's Exhibit No. 11 for identification.)

Q. (By Mr. Dahling) Witness, I show you a paper marked Company Exhibit 11 for identification, and ask you if your signature appears thereon, and what it is.

A. This is a requisition for additional help on the classification C-105,—a requisition which is forwarded to the assistant division manager, who has his approval on it, and also the division manager, who has his approval on it, asking for two platers, signed, but that is not my signature.

Q. That is not your signature on there?

A. No, sir.

Q. Do you know whose signature that is?

A. I don't know who that is.

Q. Well, does it happen sometimes in your department that your assistant might sign your name?

A. No.

Q. And you feel that this might be a forgery, then?

A. I don't know what it is. It is not my signature.

Q. This is dated September 20, 1944. Do you have any personal knowledge of having made a request of this character? I mean, I am not pressing you, witness.

496 A. No, I don't remember. There have been so many people move in and out of that department.

Q. Then I will ask you this: Is this the form which is used; which would be used by you—and I am referring to the document marked Company's Exhibit 11 for identifi-

cation—is that the form which you would use in your department if you requested additional help?

Trial Examiner Jaffee: You mean the actual blank itself?

Mr. Dahling: The blank itself.

Q. (By Mr. Dahling) Is this the blank?

A. That is the actual help requisition.

Mr. Dahling: Well, inasmuch as I am going to introduce these forms, I think that I will withdraw any further question with respect to this exhibit.

Mr. Nelson: I would like that exhibit in evidence. It will be perfectly satisfactory to us to have it, because we were going to offer the form, but this being the form in a particular case, I would prefer that it would be offered just as it is. That is an actual case from the Company's file, and I prefer that one to just a blank form.

Frankly, I want this one because it is, as we claim, made out by a clerk with his name on it,—no more than a clerical operation.

Q. (By Mr. Dahling) Mr. Traen, do you do any
497 manual labor in your department?

A. No, sir.

Q. You are not permitted to, are you?

A. No, sir.

Q. And that is the union rule?

A. Yes, sir.

Q. And the same applies to your assistant?

A. Well, the assistant foreman from time to time may get in and do—

Q. That is, give a hand?

A. Yes.

Q. But he is not supposed to under the union rules, is he, under your contract?

A. I don't know whether there is anything in the contract regarding any specific individual.

Trial Examiner Jaffee: I suppose, Mr. Dahling, when you refer to "Union rule," you mean the provisions of the UAW contract.

Mr. Dahling: Yes, I am sorry, I should have been more explicit about that, Mr. Trial Examiner. We are so ac-

customed to referring to the Union rule as the contract, that we sometimes forget ourselves.

Q. (By Mr. Dahling) Then, in addition to this assistant foreman, what other help do you actually have in this department?

498 A. Well, I have leaders.

Q. You have leaders?

A. Yes.

Q. You spoke about a clerk. Where would this clerk fit into the picture?

A. Well, there is clerks in the division office, and also I have a clerk, a time clerk in my own office.

Q. And you have a time clerk in your office under your supervision, is that right?

A. That is right.

Q. And these clerks in the division office, do you use those to make out some of your queries?

A. Yes, sir.

Q. And they are available to you?

A. Yes.

Q. For that purpose?

A. Yes.

Q. Would it not be possible that you might request them to make out a query, and they might sign it in typewriter and send it through for you?

A. Before the query actually goes through, it has got to be signed by myself.

Q. And you would say that every query that ever went through was signed, every query that you originated was signed by yourself?

499 A. That I originated?

Q. Yes.

A. No, I would not say that.

Q. In other words, some of them might have gone through with a typewriter signature?

A. You never can tell about that.

Q. And might have been queries that you yourself originated, or requests for material or something of that sort, that would go through automatically on a typewritten

signature placed on there by the clerk, to whom you had dictated your request, is that right?

A. It could be possible.

Q. Well, coming back to Company's Exhibit 11, as I understand, this exhibit has been offered and is now in evidence.

Mr. Dahling: Did you offer it, or am I supposed to offer it?

Mr. Nelson: If you do, I do not have to. If you do not, I will. It is your exhibit.

Mr. Dahling: I will offer Exhibit 11 in evidence, then.

Mr. Nelson: There is no objection.

Trial Examiner Jaffee: It is received.

(The document heretofore marked Company's Exhibit No. 11 for identification was received in evidence.)

Q. (By Mr. Dahling) Did you have any recollection that you were sent two men too many on September
500 20th, 1944—or let me put it this way: You were sent additional employees that you did not want on that date?

A. Why, I don't remember that, because there have been a lot of people moved, particularly in that department, in the last few months, on account of the classification changes and people stepping down from a higher classification to a lower, and there is so many people moving through there that it is hard to remember.

Q. Well, whose signature is that just opposite,—

A. (Interposing) That is the division manager's signature.

Q. And that is his actual signature?

A. That is Mr. Winfield's signature.

Q. And the signature above Mr. Winfield's on the exhibit, is whose signature?

A. Mr. Miller.

Q. And so they both actually signed this help requisition slip?

A. Yes, they have got to okay all of them before any of them can be effective.

Q. So in signing it, I presume it came to them in the regular course of business, did it not?

A. Yes, it is the regular course of business. As I said before, it is not effective until they sign it.

Q. And they assumed, apparently, that when it came
501 to them, it had originated in your department?

A. They assumed it, yes.

Q. And they approved a requisition from your department for two men?

A. Yes,—their names on that requisition would make it effective, whether mine was on there or not.

Q. Yes. Now, that being the case, the two men would have reported to your department, would they not?

A. If they signed it to be allowed to—and let the requisition go to the employment office, the men would report.

Q. Is there any reason to believe that this did not go through the employment office?

A. It looks like it has gone through.

Q. Well then, you received two men in your department pursuant to this help requisition?

A. Possibly, yes.

Q. And isn't it positive that you received them?

A. Well, as I said before, those two individuals who—I think there is names on there, I don't just remember right offhand, whether they came in—but ordinarily, whenever the division manager and the assistant division manager signs a requisition, if the help is available the employment office will send them through.

Q. So you would not deny that those two platers
502 came to your department in response to this help requisition?

A. No, I would not.

Q. And you have no recollection that on or about September 20th, 1944, you had too many men in your department?

A. No, I have no recollection of that.

Q. And if you had had too many men, wouldn't you have reported that fact?

A. If I had too many men I would report it to my division manager or assistant division manager.

Mr. Nelson: As far as we are concerned, we are willing

to concede for the purpose of the record that those two men probably did come through, regardless of the witness' recollection of the incident.

Mr. Dahling: Will you mark that as Company's Exhibit No. 12 for identification?

(Thereupon the document above referred to was marked Company's Exhibit No. 12 for identification.)

Q. (By Mr. Dahling) Witness, I show you a paper marked Company's Exhibit Number 12 for identification and ask you if your signature appears on this paper and what it is?

A. My signature does appear on it and this is a transfer of labor hours from the S. D. E. group to S. D. E. group number 1. It means that individuals or two individuals from group 2 worked in group 1 on that particular day and the labor hours were transferred from one
503 group to another to make the efficiency come out.

Q. And you arranged for that through the use of this form which you have signed?

A. That is right.

Mr. Dahling: I offer Exhibit 12 in evidence.

Trial Examiner Jaffee: Is that a matter of taking care of the bookkeeping?

The Witness: It is a matter of keeping the hours up to date. If the hours are charged in group 2—

Trial Examiner Jaffee: (Interposing) It is a bookkeeping situation?

The Witness: Yes, that is right.

Mr. Nelson: No objections.

Mr. Karasick: No objections.

Trial Examiner Jaffee: It will be received.

(The document heretofore marked Company's Exhibit No. 12 for identification was received in evidence.)

Q. (By Mr. Dahling) This Exhibit 12 is marked "Transferred labor." You mean that labor is sometimes transferred from other departments to your department or that you transferred to another department?

A. No, I transferred those from one group to another group.

Q. You transferred these men from your group in your department to another group in your department?

504 A. For the day temporarily, I just placed them from one group to the next group.

Q. You thought you needed them there to get greater efficiency by moving the men around?

A. It was a case of filling in with absentees.

Q. To get your efficiency, you have to take care of absenteeism and shuffle your men around to keep up production even in the event of absenteeism?

A. That is right.

Q. All right.

Mr. Dahling: Will you mark that as Company's Exhibit 13 for identification?

(Thereupon the document above referred to was marked Company's Exhibit No. 13 for identification.)

Q. (By Mr. Dahling) Mr. Traen, I show you Company's Exhibit 13 for identification and ask you if your signature appears thereon and what it is?

A. This is what is known as an "Employee's designation Pad." And in this particular case it notifies the guards at the gate that this employee is carrying personal property out through the gate.

Q. This paper, or this particular form notifies the guards that the party per letter is carrying out personal property but you could use the same type of form to permit some employees to go to another department, could you not?

505 A. I believe—may I see that, please? Is that one of the old ones? Yes, there is a place on here to permit an employee to go from one division to another, it says.

Q. And you say this is your signature on the exhibit?

A. Yes.

Mr. Dahling: I offer Exhibit 13 in evidence.

Mr. Nelson: No objections.

Mr. Karasick: No objections.

Trial Examiner Jaffee: It will be received.

(The document heretofore marked Company's Exhibit No. 13 for identification was received in evidence.)

Mr. Nelson: I understand our consent to this exhibit was conditioned upon a recess at this time.

Trial Examiner Jaffee: You are a little bit early. We will wait fifteen minutes more.

Q. (By Mr. Dahling) Mr. Traen, you say that you use this form to permit an employee to go from one division to another division? If someone applied for that permission and you felt that he had reason to go, you would fill out this form Exhibit 13 and give it to him and he could get into another division, using this form?

A. Not all of them. He cannot go in a restricted division.

Q. That is just what I am getting to. At this time it is quite important to see that only certain people get
506 to certain divisions, is it not? It isn't like it was in peacetime. Under your rules, there are quite a few restrictions about people going from different parts of the plant to other parts of the plant, aren't there?

A. That is right.

Q. You know, necessarily, of course, that you have to have in mind these rules and regulations and be certain of your man before you permit him too much freedom through the plant?

A. I do not have to have the rule in mind. The plant guards are all over the place and they will remind him quick enough of the rules if he tries to cross any particular place.

Mr. Nelson: Mr. Dahling, do you mind specifying whether these rules are Company rules, Union rules, or Army and Navy rules?

Mr. Dahling: I do not care what kind of rules they are. In time of war you cannot allow free egress or entry to these departments. You have to get a company pass for the purpose and that is an important function on the part of a general foreman.

Mr. Nelson: It is my point to suggest whether it is a military rule, a rule of the Company or a rule of the Union. It is probably agreed on that they are necessary by everybody. I want to know who laid the rule, the Army,
507 Navy, or who did?

Mr. Dahling: Who laid down these rules which re-

quire passes to go between the various departments or divisions?

The Witness: I believe the Army and Navy have restricted areas that they do not allow anybody but the employees to go in.

Mr. Dahling: Will you mark that as Company's Exhibit 14?

(Thereupon the document above referred to was marked Company's Exhibit No. 14 for identification.)

Trial Examiner Jaffee: That is nobody but employees of that particular division.

The Witness: That is right.

Q. (By Mr. Dahling) Witness, I show you a paper marked Company Exhibit Number 14 for identification and ask you if your signature appears thereon and what it is?

A. My signature is on here and this is a time reception report. This report is made out to notify people who work in the clock alley that certain individuals were absent that day or that they were late for that day and it also has a place in case of certain individuals working overtime for that day. It also remarks whether the individual is AWOL or AWL.

Q. What is the distinction?

A. Away with leave or away without leave.

508 Mr. Dahling: I offer Company's Exhibit 14 in evidence.

Mr. Nelson: There is no objection.

Mr. Karasick: No objection.

Trial Examiner Jaffee: It will be received.

(The document heretofore marked Company's Exhibit No. 14 for identification was received in evidence.)

Q. (By Mr. Dahling) What is the purpose of making out this report? It shows whether they were absent without leave or with leave. Is that in connection with determining the amount of pay they are to receive?

A. No.

Q. Well, why do you make it out?

A. We make it out so that the clock station attendant can verify that these people were in the department for a certain amount of hours or not in the department for a certain amount of hours.

Q. You then make it out as a check against the clock card?

A. Yes, for bookkeeping uses.

Q. In other words, a man may stay in the department after working hours and check out later and his clock card may show his presence in the building for some time after his shift ended, would it not?

A. His clock card would show he rang out some time
509 later than the quitting time, is that what you mean?

Q. Yes, for that purpose this report is made as a check against the clock card, that is one of its purposes?

A. That may be one of them.

Q. Will you give us any other you have?

A. If an individual reports in late, we report it on that sheet and they also verify it.

Q. And if he reports in early or if he leaves early, I mean, it is reported here also?

A. If he leaves early, we report it as so many hours worked.

Q. It is a rather important report, as far as keeping down the cost to the Company is concerned, is it not?

A. I do not know how that would affect cost.

Q. Wouldn't the cost be affected if the man could clock out and was paid by the clock card and only worked less time than his clock card would show?

A. Yes, if they were allowed to do that.

Q. You say that you make this report if a person is tardy, the purpose of that is to see that he is docked for that particular time which he was tardy, is that not so?

A. If a person is tardy it shows on the clock card and we verify it.

Q. Then this is a verification of the clock card?

A. We verify that that individual did not report
510 in the department.

Q. Then, that is for the purpose of seeing that these people are not overpaid and paid for work they did not do?

A. They cannot get paid for what they do not have on the clock card.

Q. If the time reception report differed from the clock card, which would prevail?

A. If the time receipt report differs from the clock card, it is called to our attention for verification.

Q. So the purpose of this is to see that the man gets paid for the time he worked and does not get paid for the time he does not work, isn't that one way to say it?

A. The purpose of it is that the man should get paid for the same time he rang on the card, for the time he rang in until he rang out during the regular working hours. As I stated before, there is a place on there for overtime. If an individual works overtime we also marked it. It is recorded and they pay the man accordingly what he has on the clock card.

Q. What if someone rings his card in for him?

A. If someone rings his card in and he is absent?

Q. Yes.

A. Then, of course, we report him absent from the department.

Q. And that would appear on this report?

511 A. Yes, that appears on that report.

Mr. Dahling: I offer Exhibit 14 in evidence.

Mr. Nelson: I believe Exhibit 14 was offered in evidence and received. I had no objection to it.

Trial Examiner Jaffee: If it has not already been received it is now received.

Mr. Nelson: I would like to ask the witness a question about Exhibit 14, if I may.

Mr. Dahling: I have no objection.

Mr. Nelson: As you understand Exhibit 14, it is a bookkeeping arrangement?

The Witness: That is right.

Mr. Nelson: As to Exhibit 13, it is agreed that I may ask just one question?

Trial Examiner Jaffee: All right.

Mr. Nelson: Is it true that Exhibit 13 must be signed by the superintendent or division manager?

The Witness: Yes.

Mr. Nelson: And it is good only in his division?

The Witness: Is that on the help requisition?

Mr. Nelson: It is on the pass that must be signed by a superintendent or division manager and is good only in his area of the plant?

The Witness: That is right.

Trial Examiner Jaffee: The employee designation
512 pad, Exhibit 13 is what you are referring to?

Mr. Nelson: Yes.

Q. (By Mr. Dahling) Mr. Traen, you have just told your counsel in answer to a question that these reports here are bookkeeping entries.

Mr. Nelson: That was Exhibit 14.

Mr. Dahling: That Exhibit 14 is a bookkeeping entry which you made out—you make out quite a few reports other than those I have shown you as examples here, do you not?

The Witness: We make out a daily efficiency report.

Q. (By Mr. Dahling) And possibly other reports?

A. I think you have covered it pretty well; there may be others.

Q. You make out a report, do you not, if there is a request for a leave of absence?

A. A request for a leave of absence?

Q. Yes, must that be signed by you?

A. Yes.

Q. And the absence would not be permitted unless it was signed by you, would it?

A. Well, whether I allow it or not, the absences generally take effect.

Q. What do you mean, it takes effect?

A. It doesn't make any difference whether I make
513 it or not, if the individual decides to take off, he takes off, and that's that.

Q. You mean that during wartime they do anything they want in that connection?

A. If at the present time an individual wants time off, he just takes it off.

Q. You are speaking of workers in your department?

A. Yes.

Q. And they are not fearful of being penalized when they take time off without getting permission?

A. Apparently not, because when they want to take up to three days, they are not penalized—they can have three days off.

Q. That is permitted at any time, using their own discretion as to when they want to take it?

A. There isn't anything I can do about it.

Q. They do not ask you?

A. Not for three days.

Q. So that you might, in running your department, come in there and find half your department gone?

A. I never have.

Q. But it would be possible if that is the arrangement that they can take the time off without making request for it.

A. There are a lot of things possible but I never
514 found it that bad.

Q. Why do they take those liberties?

A. Well, I do not know why they take time off. There are various reasons why people take time off.

Q. These people who are taking the time off, were the workers, I believe you said?

A. Yes.

Q. And they are members of the UAW-CIO?

A. Yes.

Q. Have you ever disciplined or attempted to discipline these people for not coming to you and requesting permission in advance?

A. No.

Q. In other words, as far as your department is concerned, they can go any time they want to go?

A. Up to three days, as far as any department is concerned, if they want to go.

Q. Then, why do you use this form requesting leave of absences? The one I have in my hand is signed November 29, 1944 and that would be a leave of absence for over three days.

A. I cannot [illegible] it.

Mr. Dahling: I am sorry. I will show it to you. Will you mark that as Exhibit 15, please?

(Thereupon the document above referred to was marked Company's Exhibit No. 15 for identification.)

515 Q. (By Mr. Dahling) Witness, I show you Company's Exhibit 15 for identification and ask you if it is signed by you and what it is?

A. This is a request for a leave of absence for an employee who was apparently going out of the state on business and requested—the requested date was 11-9-44. The employee was to return on 11-27-44 and it is signed by myself and approved. There are two signatures on there that I cannot make out. The name of the individual is Mr. Ballinger. Mr. Ballinger asked for the leave of absence and it stands out very clearly in my mind, particularly because when this man reported back to work he was not allowed to come in, even though the request had been put in for a leave of absence. He was not allowed to report back in. He was held in the employment office. The employment office insisted that this man be cleared off. I had to forward the necessary card for clearance and in contacting my superior, he in turn attempted to get the individual back in. This man was not put back until the members of the personnel department went to the employment department and had the man brought back in.

Q. In other words, there was a misunderstanding in the personnel or employment department which resulted in this case?

A. It stands clearly in my mind because he was a leader of—

516 Q. Mr. Traen, you volunteered that testimony, did you not?

A. You asked me about that particular part.

Q. I did not ask you what happened subsequent to that time, did I? I did not ask you what happened when the man came back, did I?

A. I gave you the information.

Q. Yes, you volunteered that statement, didn't you, Mr. Traen?

A. You asked me with reference to that particular paper and I gave you that.

Q. Well, I believe the record will show that it was purely volunteered, and you did that for the purpose of throwing something into this case against the Company, did you not?

A. No, I gave you the facts.

Q. It was not a deliberate attempt on your part to try to show that the Company is doing things wrong?

A. No, I am giving you the facts of the particular case. The reason it stands out so clearly in my mind, as I said before, is because this man is a leader and I was very anxious to get him back to work.

Q. And what did you do when you heard about this incident in the personnel department?

A. In the personnel?

517 Q. Yes, when they would not let the man come back.

A. Oh, that came from the employment department.

Q. Or from the employment department?

A. Yes.

Q. You heard about it, did you?

A. Yes, they called me and I,—

Q. What did you do?

A. I contacted my superior.

Q. And you contacted him with the purpose of getting the man back to work, I suppose?

A. Certainly.

Q. In other words, you "went to bat" for the man, to get him back in?

A. I wanted him back, yes.

Q. And you got him back, didn't you?

A. After I went to the personnel office and had the personnel office man go down there to get him back.

Q. That is true, but you "went to bat" for this man, and eventually, true once you started, the man got back into the plant again?

A. Yes, he got back.

Trial Examiner Jaffee: Why did you want him back?

The Witness: As I stated, he was a leader in the department, and I only have two, and I needed him bad.

Trial Examiner Jaffee: For what purpose?

518 The Witness: He is the man who instructs the employees as to how their work should be done, follows it very closely with the employees.

Mr. Dahling: Mr. Trial Examiner, may we have our recess now? I think we are five minutes behind, aren't we?

Trial Examiner Jaffee: All right, a five minute recess.

(A five minute recess was taken.)

Trial Examiner Jaffee: On the record.

Q. (By Mr. Dahling) Mr. Traen, you stated just before the recess that any worker could be absent for three days without asking for leave of absence. I believe that was your statement?

A. Yes.

Q. And when he came back he would be taken back into the department and put to work again?

A. Yes, sir.

Q. And nothing would be done about it?

A. Not if he is only out three days.

Q. If he was over three days, what would happen?

A. If he is over three days, then there is a rule to the effect that on the fourth day you request his removal from the roll.

519 Q. And if a man should happen to be three days absent one week, three days absent in the next week, and that continued along, one day the next week, and that continued along for a period of time, what would you do about it?

A. On a chronic absentee, you might say, is that what you mean? He has lots of absence? If he has a sufficient amount of absence through a period of time, why, once again you request the removal of the individual from the department.

Q. Well, when you say "request," you send through one of these queries, do you not, either clearing him from the roll or getting rid of him?

A. Yes, you send the query through the personnel office notifying them that you want the individual removed from the roll because of his absenteeism.

Q. And as a matter of fact, Company Exhibit 3 is one of those queries in which you removed Darrel B. Shelton as an habitual absentee, isn't that true? I hand you Exhibit 3 for reference.

Trial Examiner Jaffee: I suggest that it may not be fair to incorporate in the question the phrase, "You removed," in view of the witness' answer that he merely requests or makes recommendations.

Mr. Dahling: Well, I thought that we cleared that up,

where he said that the recommendation merely
520 meant that he sent it through for recording.

I will develop that further on this exhibit, Mr. Trial Examiner.

Q. (By Mr. Dahling) Mr. Traen, you have in your hand Exhibit 3. Is that what you call a recommendation?

A. Yes, this is a recommendation that this individual be removed from the,—

Q. (Interposing) Now, to whom do you send that recommendation?

A. There is copies here.

Q. Yes, but now, what do the people who receive those copies do about that? Do they overrule you?

A. Yes, it has been done.

Q. But that is only done on a Union objection to the clearance, is it not?

A. Ordinarily it is, yes.

Q. When you say "ordinarily it is," didn't you testify at least once, and I think several times, that where the steward agreed with you and the man did not take it up further with his Union, the clearance went through automatically? Didn't you so testify?

A. I told you that when the steward agreed with these, that the removal was carried out, yes.

Q. Then they carry out the removal simply by clearing it from the rolls, isn't that true?

521 A. They remove the individual from the rolls, yes.

Q. There is no further hearing in the matter at all?

A. Not unless the man asks for it.

Q. And the man asks for it through the Union?

A. That is right.

Q. So you are not recommending the removal, you are removing him unless the Union objects, isn't that true?

A. I don't remove the man.

Q. Well, you mean you do not go through the mechanics of striking his name from the roll, is that what you mean?

A. That is right, the employment department removes his name from the roll.

Q. But that is merely clerical work on their part, again, isn't it?

A. I don't know what they do. I have never been in there.

Q. But they do not come back to you and say, "No, we won't remove this man unless there is a hearing"?

A. I am trying to recall some cases now. No, personally, I have not had anything like that happen, although I have heard of several of them.

Mr. Dahling: I move to strike that out as not responsive to the question.

Mr. Nelson: I submit that it is responsive.

Mr. Dahling: No, it is not.

Trial Examiner Jaffee: It may not be,—

522 Mr. Dahling: And furthermore, it is hearsay evidence.

Trial Examiner Jaffee: It may not be directly responsive. However, it bears on the subject sufficiently closely that I think it ought to stay.

So far as it being hearsay is concerned, while it may be hearsay, it is of a nature which is clearly material, I think it is sufficiently relevant and has sufficient cogency that it should stand.

The Witness: Mr. Trial Examiner, the individual can be brought up to whom it has happened.

Q. (By Mr. Dahling) Mr. Traen, will you give us the date and the name of the individuals in this case that you say you have heard about?

A. Yes.

Q. What is the name?

A. I could not give you the exact date.

Q. Approximately?

A. But I can tell you this: That in the last, I would say the last three weeks, a certain Mr. Sumner in S. D. E. department asked for the removal of individuals from his department because he had too many men, and the following day they were all replaced, regardless of whether he liked it or not, they were sent back, and they were sent back by the employment department.

Q. And they remained in his department from then on?

523 A. Since then, of course, he has had a large turnover of people, due to cutback in production, and

there has been quite a few people removed, and he is right now in the process of removing.

Q. Were those discharges, or were they simply a case where he thought he had too many men?

A. They were a case where the people had not met the requirement, quality, quantity of production and he asked for the removal, and sent them to the employment department, and I remember distinctly him telling me that the following day when he reported for work, each individual that he had asked to have removed was reported right back in his department.

Q. Now, what were the names of those individuals, if you know them?

A. No, I don't know the names of the individuals. I could get them for you.

Q. You say that is within a period of three weeks?

A. I think it was within the last three weeks or so, yes.

Q. And do you know the name of the person in the employment department who handled this matter?

A. No, I don't. I could possibly get it, but I don't know it offhand.

Q. Now, that is the one case you are telling us about. Let us have all the facts and details in the other case that you are referring to. Your testimony indicated that there was more than one.

524

A. I can cite you a case of my own that comes to memory just now.

Q. This is one case that you had?

A. Yes.

Q. And that covers a period of how many years?

A. This is a recent case that comes to my memory.

Q. A recent case?

A. Yes.

Q. And will you give us the particulars and the name of the employee involved, the department, and the time of occurrence of the event?

A. Yes, in this particular case it was also a drinking violation, pretty well connected with the two which you have offered as evidence today.

Q. And those two,—the discipline was applied?

A. They were connected, yes. They were pretty well

connected together. The removal was requested of this individual, not only through me, but through the assistant division manager, and agreed on through the first step in the grievance procedure.

Q. When you say agreed on in the first step in the grievance procedure, what do you mean?

525 A. Of the UAW-CIO grievance procedure with the men.

Q. You mean it was agreed to by the steward, the chief steward?

A. Yes, by the Labor Relations also; and much to my surprise, the following day the individual was back on the job again.

Q. Do you know whether there was a hearing held?

A. There was.

Q. There was a hearing?

A. There was.

Q. And that was a case where they did not follow your recommendation?

A. The total sum of the hearing, as I understand, of the day before,—of course, I was not present, I don't know, I am giving you this as it was handed to me—

Q. (Interposing). When you say "hearing," that was a hearing between the Union, the CIO and Management?

A. Yes.

Q. And it was as a result of that hearing that your so-called recommendation was overruled?

A. Yes.

Q. Well, that is not the case of their overruling you when there is no hearing, is it, Mr. Traen?

A. No, in this particular case, as I said before, the violation was agreed to by the steward, of course. Also,

526 as I said before, investigated by the Labor Relations Office, and they, too, recommended that this individual be removed from the roll.

Q. Yes, but you did state that someone higher up in the Union then brought about a hearing?

A. That is right, the following day.

Q. The following day?

A. Yes.

Q. In other words, it was not Management that brought

about the hearing, it was the Union that brought about the hearing under the Union contract procedure, wasn't it?

A. Well, it certainly was Management who agreed to put the individual back.

Q. Well, that is true, but that was the result of a hearing in which Management and the Union's parties present did not agree with you, wasn't it?

A. They did not agree with me?

Q. They did not agree with you.

A. That is right, they did not agree with me.

Q. They did not agree with you, that is right. Now, had the Union not requested this particular hearing, would your discipline have gone through?

A. Well, it might have gone through unless the individual would have appealed to higher Management.

Q. Well, as a matter of fact, you are talking about
527 incidents now, you have given us this one incident. Give us one where they appealed to higher Management and you were overruled.

A. I have not got any of my own where they appealed to—

Q. (Interposing) And so we get down to this exhibit 3 again, where the discipline was discharge, you signed the query, it was approved by the chief steward, and the man was discharged. And that is the usual procedure unless there is a Union hearing, isn't it?

A. That is right.

528 Q. (By Mr. Dahling): Now, you did not like it when you were overruled in the case of this man you talked about who was given a hearing and your disciplinary action was reversed, did you?

A. It didn't make much difference whether I liked it or not.

Q. You felt you were right and that the man should have been discharged?

A. As I stated before, in all cases, before a recommendation of that type is made, as far as I am concerned, I try to be fair. I want to be fair and I try to investigate it thoroughly before I make any recommendation.

Q. And you use your best judgment in those cases?

A. To the best of my ability.

Q. And you exercise your discretion in those cases?

A. Absolutely.

Q. As a matter of fact, you do that in all of these cases involving discipline, do you not?

A. Yes.

Q. And you make what you consider a complete investigation, do you?

A. Yes, sir.

Q. You go into the man's background?

A. As far as the employee is concerned in the department?

529 Q. And there might be certain cases in the exercising of that judgment you would think, "Well, I won't recommend that man for discipline, there are reasons why I feel it shouldn't be done," is that right?

A. All violations reported by the plant guards, of course,—that is what you have reference to?

Q. I am referring to discipline which you yourself impose because of something which you have observed and which comes to you through your assistant foreman and not through the plant guard.

A. Any violation that is reported to me is acted on according to the set regulations.

Q. Yes, but as to the question of you yourself disciplining a man where it is not reported directly to you but you have knowledge of the fact, do you at times feel that under certain circumstances there should be no discipline and, therefore, you exercise your judgment in reprimanding the man?

A. Yes. If there is any doubt I feel I have a right to exercise my judgment, especially if there is a doubt whether the penalty should be imposed or the man is guilty or not. I feel I have a right to exercise my judgment.

Q. Do you do that?

A. I certainly do.

Q. You do exercise your judgment?

A. Yes.

530 Q. However, when you have exercised that judgment and the Union asks for a hearing and the hearing

follows as in this one case, the policy at the hearing disagreed with your judgment, did it not?

A. Yes, apparently so because somebody disagreed.

Q. You did not like that very well, did you?

A. As I said before, it didn't make any difference whether I liked it or not.

Q. Tell me, Mr. Traen, if the foremen were given collective bargaining, would that change that particular situation?

A. No, it would not.

Q. Do you think you would be able to make your discipline stick any better?

A. They would stay just the same as they do now.

Q. And you do not feel then that if management overruled you that under your particular agreement you could then overrule management?

A. No, sir.

Q. You gave us some hourly rate classifications—I think you testified as to the highest hourly-rated employee paid a worker in your department?

A. Yes.

Q. You have different classifications in your department, do you not?

531 A. I have two classifications.

Q. What are those classifications?

A. CF-105 and CF-102.

Q. CF-105, is that your top classification?

A. CF-102 is the polishers.

Q. What is the hourly rate of the polishers in that classification?

A. That is $1.35.

Q. In your other classifications—I forgot the number, what is the hourly rate?

A. $1.20, I think.

Q. Now, when you testified that the highest paid man in your department received—what was it, $1.35 or something like that?

A. That is the highest rate employee, the polishers, $1.35.

Q. What would be the proportion of polishers in your

department out of the seventy men? How many would be polishers?

A. I think I told you yesterday I thought it was fifty-four. There are fourteen platers and the rest are polishers.

Q. What is the rate of the platers?

A. $1.20.

Q. $1.20?

532 A. Yes, sir.

Q. I get an indication from your testimony that I hope I do not characterize it unfairly, that you feel that you have a rather limited authority with respect to the things that you do and you fail in having the final word in these matters, is that one of your complaints?

A. I have no complaint in that category.

Q. Is that your feeling?

A. I follow my job as I am told to do. I do everything they tell me to do and I do it.

Q. Do you feel you are too restricted and not given enough authority?

A. No, that is strictly up to management what they want me to do and what they give me to do and I do it.

Q. In your department is there anyone who has any authority representing management other than you?

A. In my department?

Q. In your department?

A. I am the general foreman of the department, if that is what you mean.

Q. Do you carry out the directions that come to you from management?

A. That is right.

Q. And you exercise your judgment and discretion in carrying them out?

533 A. That is right.

Q. You feel that that is your duty and responsibility?

A. Absolutely.

Q. And you feel that you have sufficient authority given you to carry out these various directions that you receive?

A. According to this stuff you brought out today, that is the extent that I can carry it out.

Q. That is the extent that you can carry it out?

A. Yes.

Q. Do you feel the clerk that you talked about could do the job as well as you do it?

A. I do not know whether the clerk has the ability to handle my job or not. Perhaps he has.

Q. Do you know the clerk?

A. Yes.

Q. You use the clerk in your business, do you not?

A. Yes.

Q. And you have some idea of the capability of the man, whoever the person may be?

A. On the clerical end of it, yes.

Q. He is good at the clerical job buf you do not think that he could run your job, do you?

A. I do not know, because I never tried it out.

Q. How much does that clerk receive, do you know?

534 A. I think it is $1.01.

Q. Your average pay is $500.00 a month, isn't it, Mr. Traen?

A. Somewhere in the neighborhood there, Mr. Dahling, I could not give you the exact figure.

Q. Why do you suppose you are paid more than your clerk?

A. Because of the type of work that I do.

Q. In other words, why are you paid more than the workers in your department?

A. For the same reason.

Q. And you say that the type of work you do is the reason—does that include the responsibility that you assume?

A. Well, do you care for me to define it a little? Possibly I can put it this way: An operator working on one job—all he has to know is that one job, it is expected of a foreman to know all the jobs.

Q. And direct the men as to how to do the jobs and as to the quality and quantity?

A. Yes.

Q. And to exercise your discretion in your department—in managing your department to see that that is the result?

A. To manage the department to the best of my ability and to get the efficiency out, that is the thing.

535 Q. And to follow the directions of the management, that you receive?

A. Yes.

Q. And to make recommendations or changes you think would better the efficiency?

A. Yes.

Q. All those things result in your being paid this $500.00 a month or being paid more money than the other people in your department?

A. That is right.

Q. I believe you attended the Packard School for Foremen, did you not, Mr. Traen?

A. Yes.

Q. How many sessions of that school did you attend?

A. I attended several sessions, I couldn't say how many.

Q. Over what period of time?

A. I remember attending some of the sessions when Mr. Sours was an instructor.

Q. How long ago was that?

A. I believe that was probably in 1943. I think it was in that time.

Q. Was that the first time you attended the Packard School?

A. No, I think there was one earlier, in 1941, I believe. I am not sure about it. I remember one where

536 Mr. Packard was the instructor at that time.

Trial Examiner Jaffee: Mr. who?

The Witness: Mr. Packard.

Q. (By Mr. Dahling): Were there various subjects discussed at this school?

A. Yes.

Q. As a matter of fact, the contract of the CIO was discussed and gone over, wasn't it?

A. Not until the last two sessions, I believe, the last session I attended the contract was gone over.

Q. How long ago was that?

A. Last week.

Q. And you had never seen the CIO contract before that time?

A. Oh, yes, I have seen it.

Q. You had a copy of it?

A. Yes.

Q. And a copy was given to you?

A. Yes.

Q. And you read the contract?

A. Yes.

Q. And you felt that that was a part of your duty as foreman to know about the provisions of the contract?

A. Yes.

Q. And that was particularly true because of the
537 grievance machinery set up in the contract?

A. Yes.

Q. And this school that you talked about is just for foremen, isn't it?

A. I do not know whether the assistant foremen attended now or not.

Q. I am using the word foremen in the broader sense.

A. You mean all classifications of foremen?

Q. Yes.

A. Yes.

Q. Has the school been going on since prior to 1939?

A. Yes. It might have been going on since then.

Q. And the foremen attended the school on the Company time, did they not?

A. Yes.

Q. And it is more or less of a discussion type of instruction, isn't it?

A. Yes.

Q. In connection with the school, do they take up subjects as "What it takes to be a foreman"? Do you recall that having been discussed?

A. Yes.

Q. And also the principles of general policy of the Company in connection with this business?

A. I do not know that they discussed very many
538 policies in the sessions that I was in.

Q. Did they discuss fundamentals in a business?

A. They might have at one time or another. There were several discussions: Each week the subject was changed.

Q. That is right. You attended that from time to time, the school, I mean, and you were designated to attend, were you not?

A. Yes.

Q. In other words, you received notice as to the school and you received the schedule so you knew when you were to attend?

A. Yes.

Q. How long were the classes?

A. Well, they would run I would say from five to twenty-five or thirty.

Q. In other words, they were relatively small classes?

A. Yes.

Q. Did they discuss at these meetings getting along better with people?

A. Yes.

Q. And safety and accident protection?

A. Yes.

Q. And war materials of the automotive industry?

A. They might have.

Q. You do not remember?

539 A. No, there were a lot of them.

Q. There were a lot of subjects discussed?

A. Yes, a lot of subjects.

Q. Did they go into the question of taxation and income taxes and public welfare?

A. I member the taxation part and the income tax.

Q. I believe you testified that they also discussed management in business?

A. That I don't know. If I testified to that I don't know about it.

Q. I am sorry. How about a discussion of waste? Did you have some period for, or devoted to a discussion of waste?

A. Scrap?

Q. Scrap and waste and how to prevent it?

A. Yes.

Q. And discussions with respect to personal improvement of the foremen?

A. Yes, I believe they had a psychologist in there who talked to us.

Q. Did they at one session discuss generally the organization of the plant with you?

A. The line organization?

Q. Well, just the general organization of the Packard Company itself, its divisions and departments and so on?

540 A. Yes, they did.

Q. So that you would have some knowledge, some over-all knowledge of the whole picture?

A. That is right.

Q. Did you have a session in connection with how to delegate authority and deputize other people to act for you?

A. No, unless that was carried on with the foreman's improvement situation, that I might have been in there.

Q. You did have a subject along that line?

A. Along the line of better foremen or something like that.

Q. Along the line of how to give orders and have the orders carried out and how to develop leadership among other men?

A. How to approach people, yes.

Q. And how to get along with your employees?

A. Yes.

Q. And they stressed considerably, didn't they, the relationship between the foreman and the worker?

A. Yes.

Trial Examiner Jaffee: In other words, how to win friends and influence people?

Mr. Dahling: I don't know whether they used that as a textbook or not.

541 The Witness: It was along that line, though.

Q. (By Mr. Dahling): They also discussed discipline, did they not, at one of these discussions in the school?

A. Yes, we had at one session—we had the Labor Relations man to come in—in fact, it was for two sessions just lately.

Q. The Labor Relations man would come in more or less be the leader? Wouldn't the class be conducted on a more or less conference method?

A. The classes were conducted by a thesis. The Labor Relations man was in there to explain certain functions of the organization and labor relations.

Trial Examiner Jaffee: And to answer questions?

The Witness: Yes.

Q. (By Mr. Dahling): And you asked questions and got into discussions between yourself and the group on these problems?

A. That is right.

Q. Did you have one session considering the subject of morale?

A. Yes, I believe we did.

Q. And also considerable time was spent in discussing what it takes to make a foreman? Isn't that true?

A. Yes.

Q. Did you have—

542 A. (Interposing): Something along that line to make a better foreman, or something like that.

Q. Then they also considered, did they not, at the school, the question of promotions and transfers?

A. On demotions and transfers.

Q. And also promotions?

A. Yes.

Q. And also on work classifications and rates of pay?

A. I don't know whether there was such discussion on classifications or not.

Q. You don't remember very much on that?

A. There were so many classifications, I do not know.

Q. And there was some discussion as to the rates of pay?

A. From time to time rates of pay would be bound to crop up in any discussion.

Q. And there was discussion with respect to Labor Relations?

A. Yes.

Q. And I suppose that there were quite a few discussions in that connection, were there not?

A. Definitely.

Q. Were you also given instructions or did you also have conferences in connection with how to handle a new man that came into your department?

A. Yes.

543 Q. And your approach that might be used to build him into your organization?

A. Yes.

Q. And also discussions upon departmental cleanliness and the results of cleanliness?

A. Yes.

Q. And also with regard to employee investigation and identification?

A. Yes.

Q. And you also discussed the selecting and training of additional supervisors, did you not?

A. We might have. I suppose we did. There were a lot of topics that we discussed.

Trial Examiner Jaffee: By the way, did you attend all the classes?

The Witness: No, I did not attend all of them.

Mr. Dahling: That is why I am trying to find out just what classes the witness did attend and whether he remembers the subjects that were discussed.

Q. (By Mr. Dahling): Did you attend a class in connection with safety promotion?

A. Yes, I had the safety promotion man in several classes and we talked about safety.

Q. Did you attend a session on the need for planning and how to plan?

544 A. I guess I did.

Q. You recall that, do you?

A. I think I did.

Q. And you had one session on promotion from within and training, did you not?

A. I am only guessing at some of these, I don't remember them all. They go pretty far back.

Q. You have been attending this school for quite a period of time, haven't you?

A. Yes.

Q. Well, as a matter of fact, you do feel it is part of your duty to train employees for the purpose of being promoted into supervision, do you not?

A. Training employees?

Q. Yes.

A. It is part of my duty to train employees to do a better job at all times.

Q. And you are training them to take over supervisory jobs?

A. Many of them do.

Q. And you may recommend that they be given a job in supervision?

A. I may recommend, but it doesn't mean that it will be acted upon.

Q. You have already testified that they have been
545 acted upon favorably?

A. Once.

Q. How many times have you recommended and it has not been acted upon favorably?

A. I couldn't say. Eighteen years is a lot of years.

Q. Mr. Traen, in order not to waste too much time here I am going to show you a list of subjects, beginning with the special series for the summer of 1941, and ask you to read off the sessions that you attended. Perhaps it might be better if you read it over and tell me those you did not attend.

A. I am sorry, I cannot go through here and tell you those.

Trial Examiner Jaffee: You mean you cannot tell on the basis of the way the list is prepared, or what?

The Witness: Yes. You see, the wording might mean a certain subject that might have been taken up, although I say this—I didn't miss a lot of sessions but I did miss an occasional one, that is all.

Q. If the record would show that during the special series of the summer of 1941 there was discussed the training plan for supervisors and the application and understanding of the plan, the timing of the job, records required, advancement and upgrading, teaching procedures to be followed by foremen, would you say that you
546 attended most of those or all of those?

A. Most of them I attended. As I said before, I did not miss too many, but I might have missed a few. I tried to make them all when I could.

Q. When you missed them didn't you try to make them up by going with another session?

A. There were some that I missed that I was able to make up in other sessions.

Q. And you attended practically all of the hearings?

A. The largest part.

Q. From 1941 up to date the conferences covered the question of overtime, grievances—do you remember being present at that time?

A. Possibly.

Q. You have no clear recollection?

A. I have no clear recollection.

Q. You did at times, during the course of this study, go into the question of grievances?

A. Yes.

Q. Labor policies, government control of manpower, plant protection, the federal income tax, selective service, replacement schedule, safety and clean-up, manpower control, employment of women, a morale building program, the Packard Induction School, and the current tax payment act, do you recall those?

547 A. Yes, I remember a large majority of them.

Q. And you attended a large majority of those?

A. Yes.

Trial Examiner Jaffee: Please, Mr. Dahling, do not go too much on the tax aspect.

Q. (By Mr. Dahling): Yes. Following that in July of 1943 there were meetings with respect to the relations with employees training to meet Company problems, safety committee and planning, departmental problems, the answers for some departmental problems, plant efficiency, material control, inspection, tools and tool grinding, plant engineering, processing and lay-out, plant loafing and on the job training, foremen's responsibilities and authorities, plant guards and discipline, job relations training, quality control, army and navy inspection, do you recall attending most of those sessions?

A. Yes.

Q. And the school continued through 1944 and is still continuing, isn't it?

A. Yes, there was a lapse in there some time now but it is now in effect again.

Q. And you are receiving your notices as to when you are supposed to appear?

A. The last notice was every two weeks, I think.

Q. Every two weeks?

548 A. Yes.

Q. In 1944, do you remember attending classes where these subjects were discussed, understanding problem employees, handling problem employees, the quality and technique of leadership, selecting and upgrading employees, the foreman's attitude towards his job, handling grievances, the foreman and the shop steward, developing job satisfaction, increasing the personal efficiency of the foreman, maintaining a two-way channel of communication between top management and foremen and the psychological aspect of delegating authority and responsibility. Would you say that you attended those sessions?

A. I would say the majority of them I attended.

Q. Would you say that you could have attended them?

A. Well there were times there when the session was set for a certain hour and at those times I was so busy I forgot to go. That is all.

Q. That is realized. Your Company attempts to make arrangements for you to attend the same class with another session, do they not?

A. That is right.

Q. You receive a schedule showing when you can pick that up when you want to do so?

A. You do not receive a schedule, you are supposed to know that.

549 Q. But the full opportunity is given to you to attend all of these classes?

A. Yes.

Q. And you have been rather religiously attending?

A. Yes.

Q. Do you think it is a good thing?

A. It is all right.

Q. I presume that the purpose and idea is to give you a broader picture and help you do your job better?

A. That is right.

Q. Mr. Traen, you testified that you worked in the coal mines in Illinois?

A. Yes.

Q. Were you a member of the Mine Workers Union, is that the name?

A. Yes.

Q. How long were you a member of that Union?

A. For nine years.

Q. Did you ever hold any official position with the Union?

A. No.

Q. Were there any strikes while you were a member?

A. Yes.

Q. One or more than one?

A. There may have been more than that.

550 Q. And your recollection is you say, that there was probably more than one during that nine-year period?

A. Yes.

Q. As a member of the Union you went out on strike with the other members of the Union, I suppose?

A. Yes.

Q. Picket lines were established?

A. They had no picket line there.

Q. You mean they did not need picket lines when they struck, everybody struck?

A. That is right.

Q. Of course then there would be no need for anyone running a picket line, would there?

A. No.

Q. How long did this one strike last that you say you remembered?

A. Yes. I remember one that lasted six months.

Q. And there were possibly other strikes also?

A. There could have been other strikes.

Q. Do you remember any of duration that long?

A. No, that was the longest one.

Q. Mr. Traen, in the official report of the proceedings for yesterday, I am referring to page 291, the following question was asked by Mr. Donovan of Mr. Keys (reading):

551 "Mr. Donovan: What obligations in general does a member assume when he becomes a member of the Foreman's Association of America?

"A. What obligations to the Association?

"Q. Yes.

"A. He pays his dues, attends his meetings, lives up to the Constitution and he should believe in the principles of unionism and fight for it."

Would you answer that question in the same manner that Mr. Keys answered it?

A. Yes.

Q. And you believe that every Union member should believe in the principles of unionism and fight for them?

A. Yes.

Q. What are those principles you have in mind?

A. Some of the principles were quoted and jotted down at the beginning there.

Q. Well, one of the principles is the seniority, would you say?

A. Seniority?

Q. Yes, is that a principle of unionism?

A. Yes, a man should be able to protect his seniority.

Q. All for one and one for all, isn't that the usual statement that is made with respect to unions?

A. Yes.

552 Q. Your principles and objectives of unionism, right down the line, are about the same as, we will say, in the CIO and the AF of L?

A. Good unionism, yes.

Q. You say that is good unionism?

A. That is what I go for, good unionism.

Q. Those principles, whether they are properly carried out or not, are demonstrated in the various contracts and arrangements and objectives of these workers unions, are they not?

A. I suppose so, I don't have much to do with the contracts of other unions.

Q. Now, I presume also that anyone who believes in the principles of good unionism would be willing to go out and fight for them, as Mr. Keys said?

A. Yes.

Q. And one of the principles would be, would it not, Loyalty to the members of the Union?

A. Loyalty to one another, yes.

Q. Loyalty to one another? As a matter of fact, Mr.

Traen, the Constitution of the Foreman's Association of America on the cover sheet has the seal—I believe this is Exhibit 1, your Constitution?

Mr. Karasick: There are several constitutions.

Mr. Dahling: This is the 1941 Constitution.

Mr. Nelson: That is Exhibit No. 4.

553 Mr. Karasick: Petitioner's Exhibit No. 4.

Mr. Dahling: I am told that this pamphlet I have in my hand entitled, "Constitution of the Foreman's Association of America" is Petitioner's Exhibit No. 4. Now, that has on it a seal, has it not?

The Witness: Yes.

Q. (By Mr. Dahling): And on each side of the seal—on one side of the seal is the word "Leadership" and on the other side is "Fidelity," isn't there?

A. Yes.

Q. Is that the seal of the Foreman's Association of America?

A. That's the seal, there (indicating).

Mr. Nelson: More properly, it is the emblem.

Mr. Dahling: I think emblem is much better.

Q. (By Mr. Dahling): Is this the emblem of the Foreman's Association of America?

A. Yes, that is it.

Q. Now, this word "Fidelity," I suppose, means among other things, loyalty, does it not?

A. Yes.

Q. And faithfulness?

A. I suppose so.

Q. And a concern for obligations?

A. Concern for interest of others, I think.

554 Q. When you say "interest of others," of course you are referring to the members of the Union who are with you in the Foreman's Association of America?

A. Yes.

Q. And your loyalty, of course, when you refer to that—you are referring to loyalty to the members of your particular Association?

A. That is right.

Q. Mr. Traen, your Union, the Foreman's Association of

America, is designated as an independent union. What do you mean by "independent"?

A. We mean not affiliated with any other organization.

Q. In other words, you have just the Foreman's Association of America and it is not affiliated with any other union?

A. That is right.

Q. And it is, however,—its chapters are a part of the Association itself?

A. Yes.

Q. Would you say, however, that the union, it is part of the labor movement?

A. Part of the labor movement?

Q. Yes, that is using the term labor in a broad sense?

A. Yes, it is a labor movement just like any other labor movement.

555 Q. Are you in favor of having the Union independent?

A. Very much so.

Q. Why do you think it should be independent?

A. Because we believe we can service our members better by being independent.

Q. Is that the only reason that you have?

A. That is the only reason I can think of right now.

Q. Do you think that it would be proper, in your opinion, for the Foreman's Association of America to take in the labor rank and file employees?

A. No, I do not.

Q. Why do you think that that would not be right?

A. They have a labor organization of their own.

Q. Let's say that they did not have a labor organization of their own, would you think that the Foreman's Association of America should permit them to take a membership in your Union?

A. Would I think so?

Q. Yes, I would like to have your opinion?

A. Only my opinion?

Q. Yes, your opinion?

A. My opinion is only one. As far as the Foreman's Association of America goes, things like that are decided far above me. I am only the president of Chapter No. 5.

Q. Yes, that is why I want your opinion.

556 A. And you asked me whether they should belong?

Q. Whether in your opinion the workers should be permitted to join your union?

A. No, I do not think they should?

Q. Why don't you think they should?

Trial Examiner Jaffee: This is all on the assumption that they have not a union of their own?

Mr. Dahling: Yes, if they haven't a union of their own.

The Witness: Well, the job is different than theirs, as far as that goes, there is a little difference in the category there.

Q. (By Mr. Dahling): Their jobs are not comparable to your jobs, are they?

A. No.

Q. And their duties and responsibilities are not comparable, are they?

A. No.

Q. Do you think that people who have the right to fire or recommend the firing or disciplining of workers should be in the same union with workers?

A. No.

Q. You do not?

A. No.

Q. In other words, it would not make for good

557 unionism if you included in one union people who had power to fire or recommend the firing, disciplining or changing of classifications of other members of the same union?

A. I do not know whether it would make good unionism or not. I have never seen it practiced or heard of being practiced. I wouldn't be able to answer it.

Q. What do you think about it?

A. I don't know, as I stated before.

Q. Do you think that would be proper?

A. I do not know whether it would be or not.

Q. You are the president of this Union and you say it is an independent union, haven't you any opinion as to the type of members you should have in your union?

A. Yes, we have definite opinions.

Q. Have you any opinions?

A. Our Constitution tells us that.

Q. That was the Constitution that was adopted for a purpose?

A. For that purpose, yes.

Q. And it includes only so-called supervisory employees?

A. That is right.

Q. I am asking you your opinion as to whether or not there should be included in a union people who have the right to recommend the firing or disciplining of others in the same union?

558 A. People who have the right?

Q. Yes.

A. To fire?

Q. Yes.

A. And hire?

Q. Yes, or to recommend it?

A. Or to recommend it?

Q. Yes.

A. People who recommend it, such as foremen?

Q. Yes, should they be grouped in the same union with people over whom they can exercise this power and authority?

A. No, I do not think they should be.

Q. Now, Mr. Traen, you were president of the Packard Local at the time of the strike in May, 1944, weren't you, or was it 1943—I am sorry, May of 1944?

A. The Packard Chapter?

Q. Yes.

A. Yes.

Q. Did you call that strike?

A. No, sir.

Q. Was there a meeting at which it was voted that the strike should be called?

A. Yes, there was a secret ballot.

Q. There was a secret ballot taken?

559 A. Yes.

Q. And the men voted to strike and you issued the strike order?

A. I didn't have to issue it.

Q. There was no proceeding under your chapter by-laws or constitution that required that?

A. After the ballot was counted that was all we needed.

Q. Did you take that matter up with your national organization?

A. I called their attention to it after the gentlemen walked out.

Q. You didn't have their approval at the time?

A. No.

Q. Did you attempt to stop it?

A. Yes.

Q. And you were unsuccessful?

A. Very much so.

Q. What attempt did you make to stop the strike?

A. My attempt to stop the strike was prior to the vote. In fact, it was my intention to even stop the vote. I was flatly told that if I continued the way I was I was going to be recalled immediately.

Q. In a case of that sort it would be the majority that ruled and they could recall you if they did not like what you did?

560 A. Yes.

Q. And that would go to any action your chapter might take? The majority would control?

A. Yes.

Q. And the majority in this case voted to strike, even though you did not want a strike?

A. Yes.

Q. And you had to go along with the majority?

A. Yes.

Q. And being a good Union man, you, of course, went along with them in a case of that sort?

A. Yes.

Q. How long did that strike last?

A. I believe it was a week or ten days—it was fifteen or—no, it was thirteen days, I believe it was.

Q. The plant was eventually closed down, was it not?

A. Yes.

Q. Closed down for lack of supervision?

A. Yes.

Q. And that resulted, of course, in a loss of production of Rolls Royce engines for airplanes and Marine engines for the PTs, didn't it?

A. Yes.

Q. Did you as president of your chapter, give the notice required under the War Disputes Act as amended?

561 A. No.

Q. Did you give notice under the Michigan Labor Act requiring the giving of such notice?

A. No.

Q. Did you ever take any disciplinary action against anyone for this strike?

A. No.

Q. You felt that if the majority wanted to strike why that was their privilege and they could vote your chapter into a strike?

A. Yes.

Q. Was it a mere coincidence, Mr. Traen, that there were a number of other strikes in Detroit plants at the same time as the Packard strike?

A. Was it a coincidence?

Q. Yes.

A. I don't know how the other strikes happened.

Q. I am referring to strikes of foremen?

A. That is what I understood.

Q. There were other strikes of foremen at that time in Detroit, were there not?

A. Yes.

Q. What other companies had strikes, if you can recall?

A. Hudson, Briggs, Murray, and there was the aeronautical Company and I think there were some more.

562 Q. And those strikes all occurred approximately the same time?

A. I would say within a week, or something like that.

Q. What company struck first, do you recall?

A. I believe it was Briggs.

Q. Well, was that called to the attention of your meeting when you held your strike vote?

A. No.

Q. And you did not know that Briggs had gone out at that time?

A. We knew, but that did not have anything to do with it.

Q. Did you know that Briggs had gone out at the time you called your strike meeting?

A. At the time of the vote, I believe we knew they were out.

Q. And you did not talk to any representatives of the Briggs Union?

A. No, not at that time.

Q. Did they send any communication to you?

A. No.

Q. And your strike had nothing to do then, I take it, with the Briggs strike?

A. No.

Q. And did you have any communication with any of the other foremen union officials or members that struck
563 at the other plants you named?

A. Prior to the time we went out?

Q. Yes.

A. No.

Mr. Donovan: I am sorry I over-stayed my time. May we adjourn at this time?

Trial Examiner Jaffee: Very well, we will recess until 2:15 o'clock.

(Thereupon, a recess was taken until 2:15 o'clock P. M.)

564 After Recess.

(Whereupon the hearing was resumed, pursuant to the recess, at 2:15 o'clock p. m.)

Trial Examiner Jaffee: You may proceed, gentlemen.

PROSPER TRAEN

resumed the stand, was examined and testified further as follows:

Cross-Examination (Continued).

Q. (By Mr. Dahling) Mr. Traen, before the noon recess we were going into the matter of the foremen's strike at Packard's in May of this year. During that strike, did the foremen picket the Packard plants?

A. There was no picket line.

Q. When you say there was no picket line, you mean there were no pickets marching up and down?

A. That is right.

Q. And that is what you call a picket line?

A. Yes.

Q. Did you have men stationed at the various gates?

A. There were members at the gates. I did not have them there.

Q. There were men at the gates?

A. Committeemen, yes.

Q. They were foremen?

A. Yes.

565 — Q. Packard foremen?

A. Yes.

Q. Were there foremen of any of the other plants there?

A. Not to my knowledge.

Q. Did you inspect these foremen stationed at the gates from time to time?

A. No, I rode around the plant, if that is what you mean?

Q. You rode around the plant?

A. Yes.

Q. Was that once or twice or were you there every day?

A. I wasn't there every day.

Q. And the strike lasted about how many days?

A. About thirteen days, I understand.

Q. How many days were you at or around the plant during that period?

A. Maybe six days, or something like that. I am not so sure about that.

Q. Did you ride around the plant each one of those six days?

A. Yes.

Q. Did you notice that there were foremen stationed at the gates?

A. Yes.

Q. And so far as you know, they were there every day during the strike, were they not?

566 A. I wasn't there every day and I couldn't say.

Q. Did you have reports come to you that these men were there?

A. I have had reports that they were there.

Q. Did you request these men to leave?

A. Did I request them?

Q. Yes.

A. No, I never requested them to leave.

Q. During the time of the strike, did you have various meetings?

A. Yes.

Q. Each day?

A. Yes.

Q. Did the officers of the Union have a certain place where they met and could be found at all times?

A. Yes.

Q. Where was that located?

A. On Harper.

Q. On Harper?

A. Yes.

Q. Did you rent a place there?

A. Yes.

Q. And is that an office building or a store?

A. It is a hall.

Q. What was the address of the hall?

567 A. I don't remember. It is the place above Mr. Lapinski's flower shop.

Q. Where is that? Harper and what cross street?

A. Harper and Frontenac.

Q. And you had someone in those offices at all times?

A. Yes.

Q. And did reports come to you as to the progress of the strike?

A. When I was in there, there was some reports that came in.

Q. If you were not there, were some other officers of the Union there?

A. Yes.

Q. And you established that as a more or less strike headquarters, did you not?

A. Yes.

Q. How many men, foremen, were on those gates at the Packard—on each gate?

A. I don't know.

Q. Well, when you drove by, how many did you see on those six days?

A. Oh, they vary, I would say from let's say two up to a dozen or fifteen.

Q. What did the foremen do, these foremen at the gates?

A. They stood in groups and talked together.

568 Q. What if another foreman came up and evidenced intentions of going through the gate? What did they do.

A. I didn't see them do anything.

Q. Do you know whether they talked with that man?

A. They might have.

Q. And they might have tried to persuade him from going in?

A. That might be possible.

Q. That might be possible, even though he might have wanted to go in and work?

A. They might have talked to him, yes.

Q. What you mean by that is that they didn't slug him or knock him down?

A. Yes.

Q. They tried to persuade him not to go in because you were on strike?

A. Yes.

Q. After the strike started at Packard, did any of the officials of your Packard Chapter have any meetings with any of the officials or members of any of the other chapters of the Foreman's Association of America, which were on strike at that time, at other plants in Detroit?

A. After the beginning of the strike, after, I would say about—I don't know, but possibly a week later, or something like that.

569 Q. What was discussed at those meetings?

A. Foremen's problems.

Q. Did you get into any discussion of any solidarity—that is to say, that you would not go back at the Packard until they went back at the other plants?

A. No.

Q. And you had no discussion of that sort at all?

A. We were discussing foremen's problems.

Q. And you say you did not discuss those problems; did

you discuss having foremen from the other plants help you out in picketing the gates at the Packard Plant?

A. No, we had no foremen from other plants, to my knowledge.

Q. From any other plants?

A. No, not to my knowledge.

Q. Did Packard foremen help out any of the foremen at any of the other plants?

A. No, not to my knowledge.

Q. And you remained on strike, I believe you said, 13 or 14 days?

A. I believe it was 13 days.

Q. Why was the strike called off?

A. It was called off at the request of our national officers.

Q. Your national office sent word to all of the
570 chapters to stop the strike?

A. Yes, we had word from Washington.

Q. And you hadn't asked them in the first place whether you should strike or not, had you?

A. No.

Q. Why did you then follow their request to abandon the strike?

A. Well, the membership deemed it that way and that is the way they voted.

Q. Then they voted again?

A. They voted again.

Q. And the majority voted to abandon the strike?

A. That is right.

Q. And the majority would rule in that case?

A. That is right.

Q. Were you the only foreman who was opposed to the strike?

A. No.

Q. There were a number of others?

A. There were others.

Q. About how many, would you say?

A. I don't know.

Q. Well, would it be two?

A. Possibly two, and it might be more than that also.

Q. Would it be 100?

571 A. I couldn't say.

Mr. Donovan: I do not hear the witness very well. Mr. Examiner, would you ask him to speak a trifle louder?

Q. (By Mr. Dahling) It would be somewhere, then, between two and one hundred?

A. I didn't say that.

Q. Would it be between two and one hundred?

A. I wouldn't know. I had occasion to talk to a few of them.

Q. The few that you talked to were opposed to the strike?

A. Some were and some were not.

Q. But those who were opposed to the strike were bound by the majority rule and had to stay out?

A. That is something we did not discuss with those who were opposed to it.

Q. You didn't discuss that?

A. No.

Q. But they did stay out?

A. Yes.

Q. Even though they felt they should be in there working?

A. I don't know how they felt.

Q. Did any of them tell you that inasmuch as Packard was engaged in producing engines for the United States Army and Navy and war production, that you

572 should go back in and go to work?

A. No.

Q. Even though they felt that way, if they were members of the Union, they were bound to stay off because of the majority rule?

A. Yes, they did stay out.

Q. Which is the greater, Mr. Traen, your loyalty to your Union or to the Company?

Mr. Nelson: I object to that.

Trial Examiner Jaffee: Objection sustained.

Q. (By Mr. Dahling) Before the Foreman's Association of America was organized, were there any strikes at the Packard Plant by foremen?

A. Foremen's strike?

Q. Yes.

A. I don't remember of any foremen's strike in a body. There might have been some individuals who walked out.

Q. Do you say there might have been? Do you know?

A. Yes.

Q. Did they walk out because they were associated with the Union?

A. They walked out because they were dissatisfied.

Q. When did that happen?

A. I have seen it happen numerous times during an eighteen year period.

573 Q. How many times?

Mr. Nelson: I assume that you are referring to more than one foreman?

Mr. Dahling: I was going to ask that as soon as I found out how many times these foremen walked out.

Mr. Nelson: Individual foremen walked out an indefinite number of times.

Mr. Dahling: He said that there were foremen walking out and he indicated strikes of foremen.

Mr. Nelson: Bodies of foremen? Bodies of foremen quitting and walking out? More than one?

The Witness: He asked about individual foremen.

Mr. Nelson: Individual foremen.

Mr. Dahling: I will ask a further question. We will forget that last one.

Q. (By Mr. Dahling) I asked you if the foremen at the Packard's had ever gone on strike prior to the organization of the Packard Chapter of the Foreman's Union or Association, I believe you call it?

A. As a body, you mean?

Q. As a body.

A. No.

Q. And I believe that you then testified that at various times or at some time various groups of foremen had walked out, is that correct?

574 A. I never said groups. I said individuals.

Q. Individuals had walked out?

A. Yes.

Q. And that was because of dissatisfaction on the part of those individuals?

A. Yes.

Q. And there had never been any group strike action by foremen?

A. Not to my knowledge.

Q. And you have been there 18 years?

A. Yes.

Q. 18 years with no group action?

A. Not to my knowledge.

Q. And these individuals that walked out, did they just walk out and quit their jobs?

A. Yes, they had no alternative.

Q. But they had the privilege to quit?

A. Yes.

Mr. Dahling: Mr. Examiner, I believe that is all.

Mr. Nelson: May I have your exhibit, Mr. Dahling?

Redirect Examination.

Q. (By Mr. Nelson) Mr. Traen, I suppose any working men at the Packard Company can hand in a recommendation or suggestion, can't he?

A. Yes.

575 Q. Well, for that matter, anybody could from the outside if they were so motivated?

A. Yes.

Q. So far as the recommendation or the suggestion is concerned, is the power to act upon them in the hands of any foreman of any rank, that you know of?

A. No, sir.

Q. Mr. Traen, I notice that Exhibit 3, the clearance slip—

Trial Examiner Jaffee: (Interposing) Petitioner's or Company's Exhibit 3?

Mr. Nelson: Company's Exhibit 3, yes, sir. These are Company Exhibits I am referring to now.

Q. (By Mr. Nelson, continuing) —three, six, twenty-four-hour notice, twelve, the transferred labor slip, fourteen, the time exception report, they are all on onionskin. You observe that?

A. Yes, sir.

Q. Presumably, those are not the originals, is that the fact?

A. No, sir, they are not.

Q. Tell us now whether the originals of those onionskins contain signatures additional to those that appear on the onionskin?

A. They do.

576 Q. And what signatures?

A. The signature of the assistant manager.

Q. I observe that Company's Exhibits 4, 5—sorry, I withdraw that. Company's Exhibits 15, 8 and 10, I believe—there is a hole in it—and, no, just Company's Exhibits 15, 8 and 10 are carbon copies. While they are not onionskin, they are carbon copies, and presumably they are not originals?

A. No, they are not originals.

Q. And do you know whether these carbon copies contain all of the signatures that would appear on the original and main document?

A. All of the signatures are on—I think this is March 15.

Q. All of the signatures are on 15?

A. Yes.

Q. As they would be on the original document?

A. Yes.

Q. Thank you.

A. (Continuing) And this one has the signature on, too. I don't know what it is.

Q. It is Exhibit 10, I believe. It is the requested change in classification, relating to the case of Locklaw Gonsowski, dated 12-6-44. That has the division manager's signature on?

577 A. Yes, and this one hasn't got all the signatures on it.

A. That is Exhibit 8, that is the penalty in the case of E. C. Williams?

A. That is right.

Q. What other signatures appear on the original, would appear on the original of that in the normal course, to make it a valid document?

A. On the original copy the assistant division manager's signature should be on there.

Q. Now, I must add to this list of carbon copies Ex-

hibit 7, which I now do, and show you that is a carbon so far as the portion not originally printed is concerned, is it not?

A. Yes.

Q. Now, do all of the signatures appear?

A. No.

Q. Would they all appear in the case of the original?

A. Yes.

Q. What additional signatures would appear on that original document?

A. The assistant division manager.

Q. Before it would be effective?

A. Yes.

Q. While we are on the matter of forms, Mr. Traen, I am asking the Reporter to mark six additional
578 forms, beginning with number 17?

(Thereupon the documents above referred to were marked Petitioner's Exhibits Nos. 17, 17-A, 18, 19, 20, 21 and 22 for identification.)

Q. (By Mr. Nelson) Showing you now Petitioner's Exhibits 17 and 17-A, I think we can agree without further direct questioning that 17-A is a carbon of 17, isn't it?

A. That is right.

Q. The original 17 is in sort of an orange color, and the 17-A is a greenish color, to distinguish the two readily?

A. Yes.

Q. But they are the same form?

A. Yes.

Q. Is that a form used by foremen now in the Packard Company?

A. In the Packard Company, in the Aircraft Division.

Q. Yes, it is a tool report,—it so indicates?

A. Yes.

Q. And do you make these out?

A. I do not have anything to do with that particular report. That is in the aircraft division.

Q. And who makes it out there?

A. The foremen in the aircraft division.

Q. The foremen in the aircraft division.

I show you Exhibit 18; that is a request for advance of wages due form. Is that a form used by you?

579 A. Yes, that is a request for advance in wages.

Q. And that is apparently used by foremen in the Packard Company Plant now?

A. Yes.

Q. And has been for some time?

A. Yes, sir.

Q. And form 19 is a form used, is it,—general group allowance?

A. That is aircraft division also.

Q. In use by foremen, however?

A. Yes.

Q. At the present time?

A. Yes.

Q. For the purpose stated on the blank, on the form?

A. Yes, sir.

Q. Exhibit 20, is that a form currently in use by foremen—and when I say that, I mean in use in the performance of their duties?

A. Yes.

Q. By you, as well as others there?

A. Yes.

Mr. Donovan: Mr. Nelson, will you just indicate what the nature of the form is? You see, you are giving us nothing but the number.

580 Mr. Nelson: Oh, I thought I had. I am sorry. If you just wait one moment, until I get through this, I will do that.

Q. (By Mr. Nelson) Exhibit 21 is likewise a form, is it?

A. Yes, it is a hospital pass card, a pass to the hospital.

Q. And Exhibit 22 is likewise a form currently in use in the Packard Plant?

A. Yes.

Q. By foremen?

A. Yes.

Q. In performing their duties?

A. Yes.

Q. Now, Exhibit 17 is a tool report; it has a serial number in red on it, and there is a carbon copy, because the back of the original is carbonized so as to carry on it a second sheet.

Exhibit 18 is request for advance of wages due.

Exhibit 19 is general group allowance.

Exhibit 20 is standard time allowance.

Exhibit 21 is, you said, hospital pass?

A. Yes.

Q. Pass to a hospital. That happens to be printed on both sides, it is in card form?

A. Yes.

Q. It is for a substantial amount of information, apparently?

581 A. Yes.

Q. And Exhibit 22 is a recommendation for a change in rate.

Now, Mr. Traen, together with the forms put in evidence in specific cases by Mr. Dahling in your testimony here today, do these Petitioner's Exhibits 17 to 22, both inclusive, cover the range of forms used currently by foremen in the Packard Plant?

A. It pretty well covers them.

Q. In the performance of their duty?

A. Yes.

Q. And these forms indicate the type of action and the type of information and recommendation that foremen currently make in the Packard Plant?

A. Yes, sir.

Q. And these are all, are they, in the performance of their duties?

A. Yes.

Q. Now, if there are any others, we have just inadvertently overlooked them, is that right?

A. Yes.

Q. We have tried to get them all?

A. Yes.

Mr. Nelson: That was our purpose. Now, I offer exhibits 17 to 22, both inclusive, in evidence.

582 I offer them to counsel for the Company for examination. I regret that I only have one of each of those; but for obvious reasons, we did not feel that we had an unlimited supply at our disposal.

Mr. Dahling: There is no objection, Mr. Examiner.

Mr. Nelson: I will now offer them to attorney for the Board.

Mr. Karasick: There is no objection.

Trial Examiner Jaffee: They will be received.

(The documents heretofore marked Petitioner's Exhibits Nos. 17, 17-A, 18, 19, 20, 21 and 22 for identification were received in evidence.)

(Thereupon the document above referred to was marked Petitioner's Exhibit No. 23 for identification.)

Q. (By Mr. Nelson) I show you Petitioner's Exhibit 23, being eight pages of correspondence sized paper, clipped together, and ask you if you recognize what that is; or I will ask you directly if that is the contract presently effective between the maintenance and production workers, the hourly rated employees at the Packard Plant, where you work, and the Company?

A. Yes, it is.

Q. The one presently effective?

A. Yes, sir.

Q. And when you were referring to regulations that
583 were covered by contract between the Company and its hourly rated workers, you were referring to such regulations as are in or based upon this agreement?

A. Yes, sir.

Mr. Nelson: I will offer the document in evidence, and offer it to counsel for examination.

Mr. Dahling: I am not doubting your word at all, Mr. Nelson. I just want to be sure that our copy is the same as yours, that is all.

Mr. Nelson: Surely, that is agreeable. We, naturally, are acting on information in this respect ourselves.

Mr. Dahling: We have no objection; it apparently is from the same mimeographing machine.

Mr. Nelson: And I offer it to counsel for the Board.

Mr. Karasick: There is no objection.

Trial Examiner Jaffee: It is received.

(The document heretofore marked Petitioner's Exhibit No. 23 for identification was received in evidence.)

Mr. Karasick: Have you a copy of it that is available?

Mr. Nelson: I believe that we only have the one copy, but Mr. Dahling kindly lends us his, if you want to make a more detailed examination of it; and I deliver the original exhibit to the Examiner.

Trial Examiner Jaffee: It will be received in evidence.

584 (Thereupon the document above referred to was marked Petitioner's Exhibit No. 24 for identification.)

Q. (By Mr. Nelson) In the course of your examination, Mr. Traen, you have been asked about rules and regulations, and I show you Petitioner's Exhibit 24, a correspondence size sheet of paper typewritten, dated as a re-issue December 14, 1944, and ask you if that is a list of the rules and regulations currently circulated by the Packard Motor Car Company among foremen in its plant?

A. Yes, sir, it is.

Q. And you received one in the proper performance of your duty?

A. Yes, sir.

Q. And are those the rules and regulations, or at least, some of them, that you referred to in your testimony?

A. Yes, sir.

Mr. Nelson: We offer it in evidence. I offer photostatic copies to counsel for the Board and counsel for the Company, and I offer the original to the Examiner; and I offer it in evidence.

Mr. Dahling: There is no objection.

Mr. Karasick: There is no objection.

Trial Examiner Jaffee: Petitioner's Exhibit 24 is received in evidence.

(The document heretofore marked Petitioner's Exhibit No. 24 for identification was received in evidence.)

585 Trial Examiner Jaffee: Mr. Karasick, I believe you wanted a few minutes at this time?

Mr. Karasick: I would like to have a recess, your Honor, if we may.

(A short recess was taken.)

Trial Examiner Jaffee: Gentlemen, please come to order.

Mr. Nelson: Mr. Reporter, will you mark that as Petitioner's Exhibit 25 for identification?

(Thereupon the document above referred to was marked Petitioner's Exhibit No. 25 for identification.)

Q. (By Mr. Nelson) Mr. Traen, I show you Petitioner's

Exhibit 25 for identification which is denominated here as Labor Relations Division Organizational Chart, and ask you if that is a paper on correspondence size white sheet, that has been lately circulated among foremen in the Packard Motor Car Company Plant?

A. It is.

Q. And it indicates the line and degree of authority of respective men above the maintenance and production workers?

Mr. Dahling: If the witness knows.

Mr. Nelson: It has it on its face, Mr. Dahling.

Mr. Dahling: Then, perhaps we ought to let the instrument speak for itself.

Mr. Nelson: I offer it in evidence. I offer copies of the exhibit to counsel for their examination and the
586 original to the Trial Examiner.

Mr. Dahling: I have no objections.

Mr. Karasick: No objection.

Trial Examiner Jaffee: I notice that the original has at the bottom in ink the words, "Issued to Departmental Supervision and discussed at foreman's meeting Friday, November 24, 1944." Is that offered as part of the exhibit?

Mr. Nelson: It is. I do not know whether it is on the others or not.

Mr. Donovan: On my photostat "foremen" is spelled f-o-r-e-m-e-n-'-s.

Trial Examiner Jaffee: Yes, that is what the original exhibit has, that which I have indicated in ink. There is another slip of paper which has the same thing typewritten and the word foreman is spelled f-o-r-m-e-n-'-s in typewriting and not in ink.

Mr. Nelson: I don't care which way it is spelled. I offer it in evidence.

Trial Examiner Jaffee: It was obviously meant to be the plural.

Mr. Nelson: If it is on the original, I will take the slip of paper away.

Trial Examiner Jaffee: In any event, Mr. Nelson, I do not think you have qualified the material at the bottom.

Mr. Nelson: I realize that. I will ask the witness
587 whether in fact he received his copy of this on Friday, November 24, 1944 or thereabouts.

The Witness: I received a copy but it might have been a day later than Friday, the 24th, a day later than the issue date on the copy.

Q. (By Mr. Nelson) Were you at the meeting, the Foreman's meeting where this was discussed?

A. Yes.

Q. And you received your copy there, did you?

A. No, my copy was delivered into my office later.

Q. Later?

A. Yes.

Q. But you heard the discussion on it at the meeting?

A. Yes.

Mr. Nelson: Mr. Examiner, I believe now it is qualified for admission along with the exhibit.

Mr. Dahling: Mr. Examiner, may I ask the witness a question?

Trial Examiner Jaffee: Yes.

Mr. Dahling: The meeting was a meeting of the foremen's school?

The Witness: Yes.

Mr. Dahling: And that is what you mean by a meeting? It was a session of the Foremen's School?

The Witness: That is right.

588 Mr. Dahling: I have no objections.

Mr. Karasick: No objections.

Trial Examiner Jaffee: I understand, then, that this was distributed by the Company?

The Witness: Yes, sir.

Trial Examiner Jaffee: It is received in evidence.

(The document heretofore marked Petitioner's Exhibit No. 25 for identification was received in evidence.)

(Thereupon the documents above referred to were marked Petitioner's Exhibits Nos. 26 and 27 for identification.)

Q. (By Mr. Nelson) Before the noon recess today, Mr. Traen, Mr. Dahling was asking you about subjects which were discussed at the Foremen's School at the Packard Plant. I show you Petitioner's Exhibits 26 and 27, and I ask you to ignore the typewritten exhibit number there, and ask you if that is a list of the subjects discussed at the meetings in the periods specified in the exhibit?

Trial Examiner Jaffee: What do you mean by the statement you are asking the witness to ignore the typewritten exhibit?

Mr. Nelson: "Packard Exhibit 26" at the top.

Trial Examiner Jaffee: You mean that you are asking the witness to ignore the designation "Packard Exhibit 25" and "Packard Exhibit 26"?

589 Mr. Nelson: That is right, because it was in another proceeding. As a matter of fact, this was submitted in the War Labor Board proceeding, and it is an exact copy of that, unfortunately, which contains a duplication of the exhibit number.

Trial Examiner Jaffee: All right.

Q. (By Mr. Nelson) I won't ask you, Mr. Traen, to identify each and every subject matter; just examine the sheet in general, and see if that is a fairly accurate list of the subject discussed in the various periods specified in the exhibit?

A. I distinctly remember some on the '39 and '40 here, although I do not remember all of them; I do remember some of them in here.

Mr. Dahling: Mr. Examiner, if that is the exhibit which was put in evidence before the War Labor Board, we have no objection to its being received in evidence.

Mr. Nelson: I will say that it is, Mr. Dahling.

Mr. Dahling: On your statement, we have no objection.

Mr. Nelson: I offer it in evidence—both of them—and I offer them to Mr. Karasick. As a matter of fact, I checked with Mr. Dahling's questions this morning, and found that the list was accurate. You did not ask him about every subject, but as you went along, my list read like yours did, with the omissions that you made for your own purposes, I assume.

590 Mr. Dahling: The Examiner requested that we leave out text subjects, and so I complied.

Mr. Nelson: I am not questioning the omissions, but I checked as you went along, and the pencil marks indicate my checks as Mr. Dahling went along.

Mr. Karasick: I would like to inquire whether Petitioner's Exhibits 26 and 27 for identification cover in substance the same subjects taught at the Foremen's Training

School, which were dealt with by Mr. Dahling in his examination of Mr. Traen earlier in the day.

Trial Examiner Jaffee: He just said so, with additional information that Mr. Dahling had mentioned.

Mr. Nelson: My pencil checks are the ones that Mr. Dahling read this morning, in that order, in his questions to this witness.

Mr. Karasick: So there are other subjects not covered in examination previously?

Mr. Nelson: That is right; and I offer them to complete the showing as to what they covered in that school, and it is an exhibit offered in a previous proceeding by the Packard Motor Car Company covering the same subjects.

Mr. Dahling: And I might say, Mr. Examiner, it is an exhibit which we would have offered and we will offer, extended to include subjects since July, 1943; so it is the same exhibit. I did not ask questions as to all of the items.

591 A. I picked out certain items to see if the witness had been at these sessions.

Mr. Karasick: It is somewhat repetitive of matters covered in the prior examination, but since it would be rather difficult to take those out and have others in, I have no objection.

Trial Examiner Jaffee: Besides which, it is all in one place.

Mr. Karasick: There is no objection.

Trial Examiner Jaffee: Petitioner's Exhibits 26 and 27 are received in evidence.

I would suggest that in order to avoid any confusion, an ink line be drawn through the designations which were used in the War Labor Board hearing at the top of those exhibits.

Mr. Nelson: I will do it right now, Mr. Examiner.

Trial Examiner Jaffee: Very well.

Mr. Karasick: What is that heading?

Mr. Nelson: It is foremen's training subjects. Number 26 begins 1939 to 1944, and number 27 is dated July 3, 1944.

Q. (By Mr. Nelson) Mr. Traen, let me inquire whether some of these meetings which you attended as foreman, as

referred to in exhibits 26 and 27, and in your testimony this morning, there were occasions when foremen asked the Company about the policy, and where the policies of the Company originated or the specific policies of the
592 Company originated. Were you present at such meetings?

A. Yes, sir.

Q. And what kind of replies did the foremen get when they inquired on those questions of policy, and where it was formulated?

Mr. Donovan: Just a moment, please. I will object to this question, owing to the undefined nature of the word "policy" owing to the fact that we have no means of knowing what this witness understands by the word "policy" as it sits in his mind; that unless counsel defines the word "policy" through this witness first, I think the question should be postponed or stricken.

Mr. Nelson: Let me inquire first, before Your Honor rules on that, whether the word "policy" was used in the question.

The Witness: Yes.

Mr. Donovan: That would not remedy my objection.

Trial Examiner Jaffee: Let me get the last three questions and answers read back, before you go any farther.

(The record was read by the Reporter as requested.)

Trial Examiner Jaffee: I think that Mr. Traen can answer the last questions preliminarily.

Mr. Donovan: I would like to amplify my objection to this extent, Your Honor: We do not feel that any-
593 thing should be on the record giving rise to an unfavorable or an unnecessarily unfavorable and an unjust inference on the part of a reader of the record of some questions of policy that may not have been taken up with the foremen because of the fact that there are almost an innumerable series of policy questions which, as a matter of common sense, no Management would first take up with the foremen before the Company inaugurated them. They start with the board of directors, they cover such fields as the field that the Company will occupy, the competitive field, the distribution of their stock, whether it

is to be widely or closely held, it suggests an innumerable number of things,—

Trial Examiner Jaffee: Let me interrupt you there. I suggest that the witness for the time being, at least, answer only the last question, whether or not,—in substance, it amounts to this: Whether or not a foreman asks in so many words, "What am I going to do on a policy question?" In other words, all the witness is asked about at the moment is whether a specific question was asked, whatever it means.

Mr. Donovan: Whatever the word "policy" means.

Trial Examiner Jaffee: Whatever the word "policy" means. Was that question asked, that is all.

Mr. Donovan: I do not think the question would have any weight, but I think the answer should be so restricted.

Trial Examiner Jaffee: I am so restricting it, and I
594 so understood Mr. Nelson to ask.

Mr. Nelson: That is correct.

Trial Examiner Jaffee: Do you understand the question?

The Witness: There was a lot of discussion there.

Trial Examiner Jaffee: Did any of these foremen say in so many words at these meetings, "What am I going to do about policy?"

The Witness: Yes, they asked the teacher, whoever he happened to be.

Trial Examiner Jaffee: You mean they used the word "policy" in their question?

The Witness: They asked him who formulates the Company policies.

Trial Examiner Jaffee: All right, now, go on from there.

Q. (By Mr. Nelson) Now, then, what did they get in the way of information or replies when foremen asked such a question of the teacher.

A. The teacher said he didn't know.

Mr. Nelson: Mr. Reporter, will you mark that as Petitioner's Exhibit 28?

(Thereupon the document above referred to was marked Petitioner's Exhibit No. 28 for identification.)

Mr. Nelson: The Petitioner offers in evidence, because

of questions asked in cross-examination by the Com-
595 pany yesterday, Exhibit 28, which is a copy of the resolution of the National War Labor Board setting up the Foremen's Panel and limiting its authority. I offer the resolution as a communication by the National War Labor Board to the Foreman's Association of America. This is our communication, our notice from them. I offer it in evidence and I offer copies to counsel for the Board and counsel for the Company; and I offer the original to the Trial Examiner.

Mr. Donovan: What is the purpose of offering this in evidence?

Mr. Nelson: Mr. Donovan read and was permitted to read many things from the transcript of testimony taken before the National War Labor Board and from the Petitioner's brief in that case. He sought an inference to be drawn from the relief requested as applicable to this case, which was, of course, only applicable as to that case. As I stated at that time, by reason of authority—the limitation of authority as set forth by the resolution of the Panel.

Mr. Donovan: Because it was referred to in yesterday's questioning, is that the only reason you offer it at this time? Am I right about that?

Mr. Nelson: Mr. Examiner, in answer to Mr. Donovan's question I offer it because of the cross-examination and
596 your Honor will remember that Mr. Donovan conferred with Mr. Benjamin and Mr. Iserman and others in the court room and accepted transcript of that proceeding and then proceeded to cross-examine Mr. Keys on it. He cross-examined him on the brief and offered my brief in evidence or cross-examined him on it and presumably intends to make a contention based upon such cross-examination. Now, in order to set that cross-examination and the documents referred to in their proper setting we offer the resolution of the National War Labor Board.

Mr. Donovan: I still do not see that it has anything to do with the purpose that counsel has in mind by introducing the offered document. What is your purpose?

Mr. Nelson: The purpose is briefly this, in our brief we asked the only relief permissible under the resolution and

probably under the authority of the National War Labor Board. We offer the resolution in support of our claim that that is so and we offer it only because of the cross-examination.

Trial Examiner Jaffee: Are there any further comments, gentlemen?

Mr. Karasick: No objection.

Trial Examiner Jaffee: Is there any dispute about the fact that this document is what it purports to be, that it is valid?

Mr. Donovan: I do not question Mr. Nelson's
597 document but I would like to see the original and I would like to examine it.

Mr. Nelson: That is our communication from the National War Labor Board and, of course, we were all present when the Chairman read it into the record in the proceedings in that case. I have every reason to believe it is absolutely accurate.

Mr. Donovan: May we go off the record, Mr. Examiner?

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record. It is received in evidence.

(The document heretofore marked Petitioner's Exhibit 28 for identification was received in evidence.)

Mr. Nelson: Mr. Examiner, that is all we care to ask this witness. Do you care to recross-examine?

Mr. Dahling: No further questions at this time from this witness.

Recross-Examination.

Q. (By Mr. Karasick) Mr. Traen, if I recall correctly, you testified that prior to the advent of the Foreman's Association there was an organization of foremen at the Packard plant. I think you set the date at some time in 1937, is that correct?

A. Yes, sir.

598 Q. Do you know anything about that organization?

A. No, I don't know too much about it. I knew it was in existence.

Q. Was it a labor organization?

A. It was a foremen's organization, strictly foremen.

Q. Do you know whether it is still in existence or not?

A. It is not, it is disbanded.

Q. Do you know when it began to organize foremen at the Packard plant?

A. It was in 1937.

Q. Do you know when it disbanded?

A. I think it was in 1938.

Q. Do you know the name of it?

A. No, I don't.

Trial Examiner Jaffee: Did it have a name?

The Witness: It may have had a name but I don't recall the name.

Q. (By Mr. Karasick): Was it limited to foremen in the Packard plant or was it an organization that took in foremen of other plants as well?

A. At that time it was limited to the Packard plant.

Q. Did it later expand?

A. No, it disbanded there also.

Trial Examiner Jaffee: Do you know whether or not it was a labor organization?

599 A. Yes, it was.

Mr. Donovan: Were you asked to join?

The Witness: Yes.

Mr. Donovan: Did you join?

The Witness: No, sir.

Trial Examiner Jaffee: Do you know whether or not it had any officers?

The Witness: Yes.

Trial Examiner Jaffee: Do you know any of them? Do you know what their names were or who they are?

The Witness: I understand at one time there was a president by the name of Hunt, I think it was.

Q. (By Mr. Karasick): Was it an active organization?

A. To my best knowledge it was, yes.

Q. By that I mean did it meet with the Company at all and negotiate a contract or attempt to negotiate a contract?

A. I couldn't answer that.

Q. You don't know that?

A. I don't know that, no.

Q. I believe you said that during the time you were a straw boss at the Packard Motor Car Company you had at one time 240 employees under your supervision?

A. Yes.

Q. And now you have only seventy employees under your supervision and you are a general foreman?

600 A. Yes.

Q. How does it happen that you are now a general foreman and have only seventy employees when at the time you were a straw boss you had as much as 240? Was that a peculiar situation or was it common or has there been a change since then?

A. It was a common situation at that time for a foreman to have a great amount of people under his supervision.

Q. It was more common for a foreman to have more people under his supervision than he would have today?

A. Yes, sir.

Q. How many leaders do you have in your department?

A. At the present time?

Q. Yes.

A. Two.

Q. Is that the average number of leaders in your department?

A. Yes.

Q. What do leaders do?

A. They instruct the employees as to how to do their job, as to quality.

Q. Do they work?

A. Yes, they work at times.

Q. How much of their time is spent at working as distinguished from telling other employees what to do?

601 A. That differs somewhat, depending on the department.

Q. What would be the rough average, would you say?

A. I would say probably they put one-third of their time actually working on a job or they are instructing the people.

Q. How many people does each leader instruct? Do they divide the department equally between them?

A. No, it depends where the department is located and what kind of department it is.

Q. I am talking about your department.

A. In my department I have one leader on the third floor who instructs all the polishers and he of course has fifty-four people that he must instruct and work with. On the other hand, I have a leader in the plating room who only has fourteen.

Q. Your department is on more than one floor?

A. Yes, part is on the third and part on the first.

Q. I don't know whether or not you stated how much a leader gets by the way of wages?

A. He receives five cents an hour more than the rank and file employees.

Q. What does he receive, exactly, per hour?

A. $1.40.

Q. $1.40?

A. Yes.

602 Q. And you said with respect to Company's Exhibits 3, 6, 12, 14, 8 and 7—those numbers are a little out of order but that is the way you were asked about them, that they were copies of originals and that the originals had the signature of the assistant manager or assistant division manager in each instance?

A. Yes.

Q. Do you remember that?

A. Yes.

Q. Now, what would that mean? That the originals had the signature of the Assistant manager or assistant division manager—would that mean something with respect to the action taken?

A. Yes.

Q. And do you mean by that that the signature of the assistant manager or assistant division manager indicated that his approval was necessary in each instance?

A. Very much so.

Q. Do you have an office?

A. Yes.

Q. Is it an office of your own?

A. Yes, sir.

Q. Is it an enclosed office?

A. Yes, sir.

Q. Does anyone else share it with you?

603 A. Yes, sir.

Q. Who does?

A. I have the Stock Department clerks that share it with me.

Q. How much of an office is it?

A. I would say about 12 by 12.

Q. Do you have a desk in there?

A. Yes.

Q. Does anyone else use the desk besides yourself?

A. The assistant foreman.

Q. Anyone besides him?

A. That is all.

Q. Who are the people that share this office with you?

A. The Stock Department employees.

Q. How many are those?

A. There are two in there at the present time.

Q. Are they in there all the time?

A. No, in and out, they are, but they do file their material in there.

Q. And they use the desk, also?

A. They use the desk, yes.

Q. And you say this is an enclosed office?

A. Yes, sir.

Q. Do you have a secretary or stenographer?

A. No, I have a clerk. She doesn't fit into the

604 category of secretary or stenographer.

Q. A clerk?

A. Yes.

Q. What are his duties—is it a male or female?

A. A female.

Q. What does this woman do?

A. She makes out the time exception reports, checks the numbers in the clock alley, makes out these various forms exhibited here, subject to my signature, of course.

Q. Does she work for anyone else besides yourself?

A. That is all, just me.

Q. And she takes care of the work which relates to the seventy employees in the department, is that right.

A. Yes.

Q. When you have any typing to do, does she do it?

A. No, sir.

Q. Who does it?

A. The divisional secretary or clerk or whatever they call her down there, she is the one that does the typing for us.

Q. Who is her immediate superior?

A. The assistant division manager.

Q. So, if you have any typing to be done she does it?

A. Yes.

Q. That is this clerk that works for you is the one
605 that takes care of the recording and clerical job of filing and that sort of thing?

A. In the office, yes.

Q. And she does the work in your office?

A. Yes.

Q. And the divisional secretary works in another office?

A. Yes, in the division office.

Q. Who are the immediate superiors of leaders in your department?

A. The assistant foremen.

Q. In your absence can queries be made out by your clerk?

A. She can make them, yes, but not my clerk, the division clerk makes them.

Q. If you were not there and there was a necessity to make a query with respect to an employee would the division clerk make them out?

Mr. Donovan: Just a minute, Mr. Examiner, this is not exactly an objection, but there has been an indiscriminate use of the words "query," "request" and "recommendation." It seems to me, I would like to know at this point which one of those counsel has in mind. I am assuming it is "recommendation," I am not sure.

Mr. Karasick: I am speaking so that the witness may understand and counsel may, of the form that I
606 thought you said was a query. The form used to recommend certain actions with respect to employees.

Mr. Donovan: You are making no distinction—

Mr. Karasick (Interposing): It may be discipline—

Mr. Donovan (Interposing): You are making no distinction between a query, a request and a recommendation?

Mr. Karasick: I took it from the witness' testimony. A query was a form the foremen had to make out, a query is something the foreman makes out which initiates certain action with respect to an employee.

Mr. Donovan: Then it might or might not be a recommendation.

Mr. Karasick: I am talking about the form itself, what it may contain, I suppose it may contain a number of things.

Mr. Donovan: You are talking about the actual paper that is used?

Mr. Karasick: The actual paper, yes—the contents of the paper might be a great number of things.

Q. (By Mr. Karasick): Witness, do you understand what I mean by a query?

A. Yes.

Q. Is it your understanding that by "query" I mean a form which initiates some action generally taken by a foreman with respect to a particular employee?

607 A. Yes, sir.

Q. What I would like to know is, if you are absent from the department and some disciplinary or other action is necessary with respect to a particular employee in the department, would the division clerk make out the query?

A. Yes, sir.

Q. She would make it out, even in your absence?

A. Yes, sir.

Q. It would—

A. (Interposing): It would need the approval of the assistant division manager before becoming effective.

Trial Examiner Jaffee: Would it need that approval, even if you were present and you made it out?

The Witness: Yes, sir.

Q. (By Mr. Karasick): In that instance though the query form would not contain your signature but would

contain the signature of the assistant division manager, is that right?

A. Yes.

Q. And then it would go through the formal procedure?

A. Yes, sir.

Q. You say that you did not attend all of the classes of the foremen's school and that you missed some of them?

A. Yes.

Q. Is it compulsory for you to make up the classes
608 or attend all of them?

A. The division manager makes it emphatically understood that he intends for you to be there.

Q. They want you to be there?

A. Yes.

Q. And if you miss a class, for example, does he follow up to see that you go there or do you feel it is necessary for you to go and make up the class?

A. If you miss the class generally he will ask you why you missed that particular class and then he will tell us not to miss the next one.

Q. If you initiate a query which recommends the discharge of an employee in your department and no appeal is taken and the emloyee is removed from your roll in the department, what happens to him then, does he go back to the employment division, the Labor Relations Division, or what division does he go to?

A. If he is removed as per the query, the employment department takes care of him. From there on I don't know what happens to him, although I have seen in some cases, where employees might have been removed from my department, but later placed in other departments.

Q. You mean that you would recommend discharge as to an employee from your department, and he would be taken out of your department and would be placed
609 by the employment department, you say?

A. By the employment department.

Q. By the employment department, in another department of the plant?

A. Yes.

Q. Had you anything to say about that?

A. No, I have no jurisdiction as far as the employment department goes. They do as they wish.

Q. You are the acting head of your department, is that it?

A. Yes.

Q. Who is the acting head during your absence?

A. The assistant foreman.

Q. The assistant foreman?

A. Yes.

Trial Examiner Jaffee: Which one?

The Witness: I only have one at this time, your Honor.

Trial Examiner Jaffee: Just one.

Q. (By Mr. Karasick): Now, I am not sure that I understood this part of your testimony, and I wish you would straighten me out on it, if you will. My impression was that you testified that when the plant guards reported violation of rules, it is necessary for you to discipline an employee or to take action according to
610 the rules and regulations; is that correct or incorrect?

A. That is right.

Q. Now, when discipline is necessary, you follow the rules and regulations which have been introduced in evidence as Petitioner's Exhibit 24, is that right?

A. Yes, if the violation is on there, that is the one we follow.

Mr. Donovan: I submit that the witness' testimony was that only in the cases where there was a set, fixed penalty for some common infraction, such as gambling. That does not appear to be the case, by any means, with all infractions of the rules, some of which were serious or would call for discharge or some other disciplinary action.

Q. (By Mr. Karasick): Is that right, Mr. Witness, or not?

A. No, that is not right.

Q. Would you straighten us out, then, because we are all interested in just finding out what the facts are?

A. In the case of a discharge for any other reason, then if the discharge is asked for or recommended, it is never settled until it gets into the Labor Relations office, and

they settle the situation for us and they decide whether the recommendation is right or wrong.

611 Q. I think you are getting just a little away from the thing that I am trying to get clear in my mind here, and that is this: Is there any distinction between your discretion in disciplining an employee when a violation occurs that you find out about yourself, or when a violation occurs which is reported to you by a plant guard, say?

A. If a violation occurs that I find out myself, I use the same penalty that is recommended on the form.

Q. That is assuming it is one of these violations which is on the form?

A. It is one of those, yes.

Q. That is Petitioner's Exhibit 24. Who issued this Petitioner's Exhibit 24? Was it the Company?

A. Yes.

Q. Did the foremen help in setting up these particular violations as being the most common in the form of penalties to be set up under them? That is, were you consulted as a foreman in this?

A. Oh, no.

Q. This was given to you by the Company, is that right?

A. Yes.

Q. And by "this" I mean Petitioner's Exhibit 24.

I have no further questions.

Redirect Examination.

612 Q. (By Mr. Nelson): I have a couple of questions, if I may at this time, Mr. Examiner: Mr. Traen, referring now to some of the questions asked you by Mr. Karasick, let me ask you whether the number of persons supervised by a foreman necessarily determines his rank or pay or his importance, or whether it is rather the importance of the operation, the difficulty of the operation, which fixes his rank and pay?

Trial Examiner Jaffee: Or a combination of both?

Q. Or a combination of the two?

A. That is it.

Trial Examiner Jaffee: Which?

The Witness: It is the importance of the job, and not

so much the amount of people, because I know that the amount of people a foreman supervises, varies quite a bit.

Q. It is important from the human side, according to the number of people that he supervises, but so far as the plant is concerned and his rank and pay, do you have also to take into consideration the importance and difficulty of the operation he supervises?

A. Yes, sir.

Q. Now, about Mr. William Hunt: Do you mind if I correct your testimony and suggest that he was secretary-treasurer of the previous organization, and not president?

A. Well, I knew that he was one of the officers, but—

Mr. Nelson: We are asking a subpoena for Mr.
613 Hunt, Mr. Examiner, because he is available and none of the other officers are.

Trial Examiner Jaffee: What do you mean when you say you are asking?

Mr. Nelson: I understand that we have to ask you for a subpoena.

Trial Examiner Jaffee: The rules also provide for making an application.

Mr. Nelson: May I make it in this form? I desire to subpoena Mr. William Hunt.

Trial Examiner Jaffee: I suggest that you look at the rules and regulations, and follow the form indicated.

Mr. Nelson: Very well. That is all.

Recross-Examination.

By Mr. Donovan:

Q. You do not remember the name of this 1937 group that you say were organizing or attempting to organize the foremen of the Packard plant, Mr. Traen?

A. No, I do not.

Q. Did you ever hear it?

A. No. If I did, if I had heard it, I would surely remember it. I don't remember it.

Q. Did you ever see one of their application cards?

A. No, I didn't see the application card.

Q. Did any of the other foremen, within your
614 knowledge, see any of the application cards, or join?

A. Yes.

Q. How many?

A. Well, it was my understanding—

Q. That you know of?

A. It was my understanding when I was approached to join, that there was somewhere in the neighborhood of 200 already in.

Q. Well, that is what someone told you. You don't know how many actually had applied for and became members of this group, do you?

A. That is what you asked me. You asked me, do I know.

Q. That is right, of your own knowledge, I am asking you now; you don't know how many members they had, do you?

A. Of my own knowledge, no.

Q. You don't know what percentage of the total number of Packard foremen was involved, then, do you?

A. No, sir.

Q. Was this a CIO Union?

A. I believe it was.

Q. A CIO Union?

A. I think it was, yes.

Mr. Donovan: All right, that is all.

Recross-Examination.

615 Q. (By Mr. Dahling): Mr. Traen, I believe you testified that you followed the rules and regulations in connection with disciplinary matters. Those rules and regulations I believe you referred to as being Exhibit 24, which was issued, a reissue of December 19, 1944, is that correct?

A. We follow the rules as near as we can on those sheets.

Q. Now, when did you first receive rules of that character, if you remember?

A. Rules of this character were received some time before this issue.

Q. And can you say how long?

Trial Examiner Jaffee: Before this what?

The Witness: Before this issue.

Trial Examiner Jaffee: Before this issue? Oh, before that particular exhibit?

The Witness: Yes.

Q. (By Mr. Dahling): Do you recall how long before the issuance of Exhibit 24 you first received rules of that character in printed form?

A. I think it was about three months, two or three months, that we received something similar to this, but with the exception that it was not signed by the Labor Relations Committee and Union Plant Committee.

Trial Examiner Jaffee: When you say two or three months, you mean two or three months before the
616 date on that particular paper?

The Witness: Yes, sir.

Q. Prior to that did you have any written rules that you followed, such as appear on Exhibit 24?

A. The ones that I just spoke about.

Q. Prior to those, did you have any printed rules that you followed?

A. No, we didn't have any printed rules.

Q. What did you do, then, prior to three months before December 14, 1944, in case of disciplines?

A. In case of any discipline prior to those rules, it was always discussed with our assistant division manager as to what we had put on his particular query.

Q. And then you would make a recommendation, would you, to him?

A. He would make the recommendation to us.

Q. Now, what about offenses, insubordination or offenses that are not covered by these rules? What do you do in that case?

A. At the present time?

Q. Yes.

A. We still discuss them with our assistant division manager.

Q. Now, I believe this morning you testified with respect to Company's Exhibit 3, and I will show you
617 that exhibit. Now, as I recall your testimony, you said that if you issued this query, this Exhibit 3, and it was approved by the steward and no hearing was

requested by the Union, that it automatically went through as a discharge. Do you recall that testimony this morning?

A. Yes.

Q. Is that still your testimony?

A. It still goes in effect, the same as before—

Q. Automatically?

A. (Continuing): —if the steward agrees, the clearance goes through.

Q. And your action in writing that query in which you state that the man is discharged, means that the man is discharged unless the steward objects or he goes higher up into the Union line of appeal, is that not correct?

A. Yes, the request for the man to be cleared from the roll is carried on through the employment department.

Mr. Dahling: That is all.

Trial Examiner Jaffee: Are there any further questions?

Mr. Karasick: No further questions.

Mr. Nelson: Nothing further.

Trial Examiner Jaffee: Mr. Traen, have you any discretion as general foreman beyond your authority as general foreman?

618 A. No, sir.

Q. Have you any knowledge of this earlier organization of foremen, other than what somebody told you about it?

A. The only knowledge I have is being approached by an individual to enter into the organization.

Q. Is it or is it not true that such knowledge or information as you have is based upon what this individual told you?

A. Yes.

Q. And is it or is it not true that that is all you know about it?

A. That is all I know about it.

Q. Do you or do you not consider that your membership in the Foreman's Association of America, in your opinion, would permit you to disobey a lawful order of management, given by management to you as general foreman, within the scope of your authority as general foreman?

A. They would not permit it.

Q. Would you or would you not feel that you should obey such an order?

A. I should obey it, yes.

Q. What authority do you have as general foreman which your assistant foreman does not have, if any?

A. The first step in the grievance machinery is generally handled, in my case anyway, by myself. Very
619 few minor grievances are handled by the assistant foreman; the steward or the representative of the rank and file as a general rule, comes to me. That is one of the authorities that is vested in me, in my case.

Q. Does the assistant foreman participate in any way in any query that you send on, or any recommendation you make, concerning an employee in your department?

A. He discusses the contents, or the proposed query, before I recommend it.

Q. And does he upon occasion make recommendations to you before you in turn pass on your recommendations?

A. He never recommends. He just discusses the case in question.

Q. Well, what I mean is, I do not mean a formal recommendation, but does he ever say to you in substance, "I think we ought to do thus and so"?

A. Oh, yes.

Q. And you then make up your own mind from your knowledge or information, and pass on your recommendation?

A. Yes, sir.

Q. And you give, if I assume correctly, you give such weight to what the assistant foreman says as you think his statement is entitled to?

A. That is right, yes, sir.

620 Trial Examiner Jaffee: Are there any further questions of this witness?

Mr. Donovan: I have one.

Recross-Examination.

Q. (By Mr. Donovan): You said a moment ago, in answer to a question from the Trial Examiner, that you would obey management's order in a situation that he put to you?

A. Within my scope of authority, yes.

Q. And you went out on strike with the other foremen in May, 1944, didn't you?

A. Yes.

Q. Did management order that? Was that a management order?

A. No, sir.

Q. Did management want you to go out on a strike?

Mr. Nelson: I will object to that. I do not know how he would know.

Mr. Donovan: Don't you want him to answer that question?

Mr. Nelson: No, I don't think he has any way of knowing. Sometimes management precipitates strikes.

Mr. Donovan: Well, let's find out.

Mr. Nelson: And I suspect they did,—

Mr. Donovan: Let's find out.

Mr. Nelson: I am sure they did in this case.

621 Q. (By Mr. Donovan): As a matter of fact, management definitely did not want you to strike in May, 1944, isn't that true?

Mr. Nelson: Object to that, he doesn't know.

Trial Examiner Jaffee: I think the form of the question is objectionable.

Mr. Donovan: Am I not entitled to find out whether this man will or will not admit that it was management's wish that he go out on strike, and that he went out in obedience to that, after his testimony a minute ago?

Mr. Nelson: I object to that question. They cannot treat men the way that they treat these men, and expect them to take it.

Mr. Donovan: I move to strike that from the record.

Trial Examiner Jaffee: All right, it is stricken, but I suggest that your question is conclusionary.

Mr. Donovan: I will ask another one:

Q. (By Mr. Donovan): Did management ask you to strike?

Mr. Nelson: I object to that.

Trial Examiner Jaffee: You may answer.

A. No, they didn't ask me to strike.

Q. (By Mr. Donovan): Did they order you to strike?

Mr. Nelson: I object to that.

Trial Examiner Jaffee: He may answer.

A. They didn't order me to.

622 Q. (By Mr. Donovan): Do you know any foremen that they instructed or ordered to strike in May of 1944?

A. I don't know what they may have told other foremen.

Q. Well, do you know of any one foreman that they gave such an order or instruction to, Mr. Traen? You know what I mean when I ask you that question, don't you? Do you know of a single foreman that they gave such an order or instruction to?

A. I don't know of any.

Q. No, of course, you don't.

Mr. Donovan: That is all.

Trial Examiner Jaffee: Are there any further questions of the witness?

Mr. Nelson: No further questions.

Trial Examiner Jaffee: The witness is excused.

Mr. Nelson: Oh, by the way, you did not disapprove of the objects of the strike, did you?

A. No, sir.

Q. It was a question of policy with you, wasn't it?

A. Yes.

Recross-Examination.

Q. (By Mr. Donovan): The objects of the strike included the closing of one or more plants if it was possible to close them by that strike, didn't they? Isn't that true?

623 A. Did you say the closing of one or more?

Q. That is right.

A. I was only interested in one.

Q. That is the only one you tried to close?
A. Definitely.
Q. And you did close it, didn't you?
A. Yes.
Q. And that was a union objective, wasn't it?
A. The Union objective was to gain some of the things which were rightfully ours.
Mr. Donovan: All right, that is all.

Redirect Examination.

Q. (By Mr. Nelson): It was the Company that closed the plant, wasn't it?
A. Yes.
Mr. Donovan: I submit that is argumentative. If Mr. Nelson wants to try to argue that and get some judge or tribunal to decide it at the proper time,—
Trial Examiner Jaffee: Let us not get into a metaphysical discussion.
Q. (By Mr. Nelson): When you left the plant it was wide open, and operating, wasn't it?
A. Yes, it was.
Q. And it did not shut down until the Company sought to shut it down, did it?
624 A. That is right.
Mr. Nelson: That is all.
Trial Examiner Jaffee: The witness is excused.

(Witness excused.)

Off the record.
(Discussion off the record.)
Trial Examiner Jaffee: On the record. We will adjourn at this time until 9:30 A. M. tomorrow morning.

(Whereupon at 4:30 o'clock P. M., Thursday, December 21, 1944, the hearing was adjourned until tomorrow, Friday, December 22, 1944, at 9:30 o'clock A. M.)

625 Room 737 Federal Building,
Detroit, Michigan,
Friday, December 22, 1944.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 A. M.

Before:

Samuel H. Jaffee, Trial Examiner.

627 PROCEEDINGS.

Trial Examiner Jaffee: Gentlemen, will you come to order, please? Are you ready with the next witness?

Mr. Nelson: I call Mr. Thomas Dwyer.

THOMAS DWYER,

a witness called by and on behalf of the Petitioner, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Nelson): Your name?

A. Thomas Dwyer.

Q. Your residence?

A. Detroit.

Q. The street?

A. 18501 San Juan Drive.

Q. Where are you employed?

A. Packard Motor Car Company.

Q. How long have you been employed there?

A. I have been with the Company thirty-eight years.

Q. What did you do when you first went to Packard?

A. Electrical work, and I am still on it.

Q. Were you a journeyman at that time or an apprentice?

A. Well, I would say an electrician.

Q. Were you at that time a member of any labor organization?

628 A. No.

Q. Just what was your work as an electrician, was it with respect to building or cars?

A. That had to do with car wiring and at the present time it is Marine motors.

Q. How many years did you work as a maintenance or production worker?

A. Oh, I would say approximately twelve years.

Q. Then what happened?

A. Then I was made a foreman.

Q. A foreman over what line of work?

A. Well, it was electrical, all the assemblies, the making up of the panels and so forth, shooting trouble, batteries and repairing and so on.

Q. It had to do with the electrical wiring and service of cars?

A. It is tied in with all of that.

Q. As a foreman what grade of foreman were you at first?

A. I was an assistant foreman.

Q. And that is the foreman who is next to the workmen?

A. Yes.

Q. It is the lowest rank of foreman?

A. At that time, yes.

Q. How many men did you have under your direction?

629 A. I would say at one time I had approximately 500 men.

Q. Did you serve as a foreman for some period of time and then have a raise in rank or did you remain at what we call an assistant foreman all the time?

A. No, I was an assistant foreman and then raised to foreman.

Q. How long were you an assistant foreman, approximately?

A. I would say approximately six years.

Q. And then you became what we call a foreman now, a grade above that?

A. Yes.

Q. Did you finally attain a rank of general foreman?

A. At no time was I given that recognition.

Q. Did you perform the duties of general foreman?

A. If I had more than one department or two departments that should be recognized as a general foreman.

Mr. Donovan: Mr. Examiner, I will object to the last question and ask that it be stricken because a question involving the use of the word "duties" was undefined, and I think if counsel wishes to develop any particular things that the witness did, either as assistant foreman or foreman or general foreman, that would be proper, but I certainly do not think an answer embracing
630 the breadth of that question should be permissible. That is one of the issues of the case.

Mr. Nelson: I would like the answer to remain until I have had an opportunity to inquire further of the witness. I frankly did not anticipate the answer I received.

Trial Examiner Jaffee: I think a further basis should be shown before the answer be permitted to remain.

Mr. Nelson: I ask that it not be stricken for the time being, as I intend to inquire further and properly qualify the answer.

Trial Examiner Jaffee: All right.

Q. (By Mr. Nelson): Mr. Dwyer, what was the characteristics of a general foreman's position and responsibilities?

A. Well,—

Mr. Donovan: Just a minute, I will object to that question, as to what was the characteristics—it does not convey anything and it allows the witness a rather broad scope in answering. It should be more direct and specific.

Q. (By Mr. Nelson): All right. Did a general foreman have responsibilities for and jurisdiction over more than one division?

A. May I correct you, Mr. Nelson?

631 Q. Yes, that is exactly what I want you to do, I want the facts.

A. Well, the general foreman has to do with departments, not divisions.

Q. And departments are what?

A. Departments are or can be anything that has ten or twelve men, machine operations or what-not.

Q. And the general foreman's authorities and duties had to do with more than one department, is that right?

A. That is right.

Q. When a foreman had to do with more than one department was he generally classified as a general foreman?

A. In some cases I understand, yes.

Q. In your case what?

A. No.

Q. What departments did you have jurisdiction over?

A. I had the F. E.

Q. What is that?

A. The F. E. was the electrical assembly. It had to do with all the electrical parts of the car and it had to do with batteries, radios and what-not, that came along in that particular cycle.

Q. Any other departments?

A. N. A. Department.

Mr. Dahling: May we have the dates, please?

632 Q. (By Mr. Nelson): Will you fix the dates, if you can? He did it in a way.

A. I cannot fix the dates.

Q. The years, perhaps? What are the years?

A. I just cannot do that but it is in the Packard Motor records. In other words, the only thing I can say is that the cycle I have been I would say was from 1905 up to the present time.

Q. Now, where in that cycle does the period of foremanship begin?

A. I would say approximately six years—well, now, just let me think this thing over.

Q. You refresh your recollection and tell us to your best recollection when your foremanship began at Packards.

A. I would say approximately twelve years after.

Q. Well, that would be about 1917, if you started in 1905?

A. I started in 1905.

Q. That is approximately correct?

A. That is approximately correct.

Q. And that is your recollection?

A. Yes, sir.

Q. Then you became a foreman of the lowest rank?

A. Yes.

633 Q. And about how many years after that were you promoted to the foremanship of the next higher rank?

A. I would say approximately fifteen years after I started, that I became a foreman.

Q. I do not quite understand that answer in view of the other answers. Was it twelve or fifteen years you worked as a workman before you became a foreman?

A. Will you give me that again?

Trial Examiner Jaffee: That question confuses it still further. As I understand the testimony so far, he started approximately in 1905, he was an assistant foreman for twelve years.

Mr. Nelson: No, he was a worker.

Trial Examiner Jaffee: I mean, assistant foreman after twelve years, and I understood he had the job of assistant foreman for approximately six years, then became a foreman. Now, his last testimony changes the latter period in effect, from six to three years, because he says he became a foreman fifteen years after he started.

Q. (By Mr. Nelson): Well, will you tell us now. You started to work in 1905, you worked as a worker for how many years?

A. I would say approximately six years.

Q. All right, that would be 1911?

634 A. Yes.

Q. Then what happened?

A. Then I was made an assistant foreman.

Q. For how long did you remain an assistant foreman?

A. I would say approximately six and one-half years.

Q. That would be 1917 or 1918?

A. In through there, yes.

Q. And then you passed to what grade of foreman?

A. To a foreman.

Q. Still in the electrical line?

A. That's correct. I may have had two or three departments, but I was still in the electrical set-up.

Q. Two or three departments within the electrical set-up?

A. Yes, some of the departments had nothing to do with the electrical, but nevertheless, they were departments assigned to me.

Q. Then was there a change in your rank, or did you continue as foreman?

A. I continued as a foreman.

Q. Notwithstanding that you had a number of departments?

A. That is correct.

Mr. Donovan: Well, he said two or three?

Mr. Nelson: Yes, two or three departments.

Q. (By Mr. Nelson): That was more than one department, was it not?

635 A. That's correct.

Q. Did you continue as a foreman up until a recent date?

A. Up until 1939.

Q. Could you remember the month?

A. Well, I would say November or December of 1939.

Q. Prior to November or December of 1939, did you become interested in and become a member of a foreman's organization?

A. That is correct.

Q. Do you recall the name of the organization?

A. Yes, I have my receipt right here. The United Foreman's and Supervisor's Unio.. No. 918.

Q. Does it indicate an affilfation?

A. It indicates an affiliation with the CIO.

Mr. Dahling: Mr. Examiner, I object to this line of testimony on the ground that it apparently relates to something that transpired back in 1939. It is incompetent and irrelevant as far as this particular petition is concerned. We are here dealing with a petition that was filed in 1944 in connection with a representation case. I do not see how this testimony has any bearing on the situation.

Trial Examiner Jaffee: Do you not think the early attempts of the foremen to organize are relevant here?

636 Mr. Dahling: I do not, even though Exhibit No. 3 contained that information.

Trial Examiner Jaffee: Yes, I agree with that, but the objection is overruled.

Mr. Dahling: May I have a continuing objection to this line of testimony?

Trial Examiner Jaffee: Very well.

Mr. Nelson: I will ask the reporter to mark this receipt as an exhibit.

(The document above referred to was marked as Petitioner's Exhibit No. 29 for identification.)

Mr. Nelson: I offer the exhibit now for examination, and I offer it in evidence also.

Mr. Dahling: Mr. Examiner, the admission into evidence of this exhibit is objected to for the reason stated in the objection to this line of testimony.

Mr. Karasick: Mr. Examiner, I have no objection to the exhibit, as such, beyond the fact that I do not quite see what it adds to the record. It merely, perhaps, establishes the name of the Union, which has already been testified to by the witness.

Mr. Nelson: I desire this in evidence because I have another document to follow it and I expect to make a complete showing that does affect this case and does fix the attitude of the Packard Company towards
637 foremen organizing. I expect to show the lengths to which they would go in opposing it.

Mr. Dahling: May we have the last statement of counsel again, please?

Mr. Nelson: I expect to show the lengths to which the Packard Company would go in opposing the foremen organizing.

Mr. Dahling: Mr. Examiner, I believe it has been stated in the record that the Company has very definitely taken the position that it would be contrary to the best interests of the Company, and, furthermore, contrary to public policy and public interest to have these supervisors and representatives of management be considered as a unit for collective bargaining under the law. Now, when we say we are opposed to it, why, of course, we are opposed to it. I do not see that this testimony is necessary, in view of that position of the employer.

Mr. Nelson: Well, it involves another public interest, too.

Trial Examiner Jaffee: At any rate, the only thing before me now is the objection to Petitioner's Exhibit No. 29. It is received in evidence.

(The document heretofore marked Petitioner's Exhibit No. 29 for identification was received in evidence.)

638 Q. (By Mr. Nelson): Did you attend the meetings of Local 918?

A. No, I was working at nights.

Q. And you could not get away?

A. That's right.

Q. You continued your membership, however, for some time?

A. Until it disbanded.

Q. How long after you became a member did it disband?

A. Well, I have forgotten the record, that is, I don't know where that is now, that is, from the time I joined until it disbanded.

Q. Was it any great length of time?

A. No, it wasn't.

Q. Was it a number of months or a number of years?

A. Well, I would say approximately a few years.

Trial Examiner Jaffee: A few years after he joined it or a few years after it started, or what?

Q. (By Mr. Nelson): I take it, you mean a few years after you joined it, is that correct?

A. Yes.

Q. Was this Local 918 limited to Packard foremen?

A. I don't know whether that was limited to foremen or not, but nevertheless, I joined it as a foreman.

639 Q. The actual working of the Local, you were not very familiar with because you did not attend the meetings?

A. Yes.

Trial Examiner Jaffee: Was it limited to Packard employees or whatever class of employees were eligible?

The Witness: That I don't know.

Q. (By Mr. Nelson): Until it disbanded you remained a member?

A. That is correct.

Q. And you were at that time a foreman?

A. That is right.

Q. Of the Packard Motor Car Company?

A. That is right.

Q. Now, shortly after you joined this organization was there a change in your status?.

A. Well, after I joined this organization—I would say approximately one month—I was called in the office and they told me that I would have to take a cut. I was working nights. I told them well, I didn't care to take a cut and would they send me to the Employment Department.

Mr. Donovan: Mr. Trial Examiner, I have an objection to the question and the answer which was given. The obvious purpose is to put on the record material which will give rise or hope for a rise as to an unfavorable inference against the Packard Motor Car Company
640 in this case for doing something, to-wit, not agreeing or encouraging a foreman's organization and not agreeing to bargain collectively with the Foreman's Association of America, when it is well known that it is not wrong in any concern and that it is a law as pronounced by the National Labor Relations Board—because of that fact I think the question is improper and there is danger of an unfavorable inference in the minds of one or more tribunals that may read the record. I do not think the question is proper and this line of questioning is improper. I object to it and ask the question and answer be stricken.

Trial Examiner Jaffee: The mere fact that an unfavorable inference is or is not created for a certain question and answer is not important. I do not care whether the inference is favorable or unfavorable, I want to know whether the inference is proper or not. You speak of what the law was. As I understood it, the gentleman was speaking about a situation apparently which occurred a month after he joined in November or December, 1939, and, therefore, a month after that time, which would be about the first of 1940 or somewhere in there. At that time the Maryland Drydock decision had not come down and the law as of that time was, therefore, a law presumably of earlier cases. One of the early cases
641 was the Union Collier case, which, although it was still after the time when the witness was apparently called into the Packard office, it was still before the Maryland Drydock case. I am rather troubled about another

aspect of the question. I would like to inquire of Mr. Nelson how these immediate details are pertinent to the issues here.

Mr. Nelson: I would like to briefly show the history of this organization as being the only predecessor we know of of the Foreman's Association of America, in a factory plant of supervisors forces, being as these things go, immediately preceding. I would like to show the experience of this particular person who is also a member of the Foreman's Association of America and who was one of the men who helped organize it.

Trial Examiner Jaffee: I know it is a question of degree, it seems to me, that you have to begin with. Mr. Dahling indicated a concession of the Company, that it was opposed to it to a certain degree. How much more than that do you think you need?

Mr. Nelson: I think I need a good deal more. There has been a lot said about strikes around here and why these men struck and one thing and another, and presumably there is a knowledge of what occurred, and what they might expect if they joined an organization of their
642 own. You see, these men apparently cannot be expected to be ignorant.

Trial Examiner Jaffee: At any rate, I think the answer should be excluded on the further ground, which nobody has raised, that the witness speaks about being called into an office and somebody telling him something. I do not know who that somebody is. Foundation should be laid and what that something was.

Mr. Dahling: Whether the man was called into the office and objected to taking a cut or not, is again immaterial. If the purpose of it is to show that this man had a grievance, and the testimony that has been put in to date would indicate that that is a part of the purpose, why, of course, it is totally irrelevant. We are not dealing with whether or not these foremen had grievances in this proceeding. It does not make any difference whether they have any present grievances or not.

Trial Examiner Jaffee: I know, I am assuming, and I may be wrong, that Mr. Nelson is going to get from the

witness something to the effect that he was told why the cut was going to be put into effect.

Mr. Nelson: No, I do not expect to show that. I want to show what happened to this man immediately following his membership in a foreman's organization.

643 Trial Examiner Jaffee: From which I assume you are asking the finders of the fact to draw certain inferences?

Mr. Nelson: That is right, as connected with the issues in this case.

Mr. Donovan: Mr. Examiner, my objection was also based in part upon the frankly pronounced reason and basis of counsel who is examining the witness for this line of questions, which was as follows, and I think this is an exact quotation, he said, "I want this testimony in to show the lengths to which the Company will go in opposing the organization of foremen." Related to my prior objections is the fact that that has no semblance of wrong of any kind by the employer. I said that whether it is wrong or not wrong and represents any improper conduct by the employer is tested by the state of the law as it is today and not as of any prior period, either before or after the Union Collier case or any other case. That is not a wrong and cannot be considered such in this case because of the direct holding of the governmental bureau, the National Labor Relations Board in charge of matters of this kind, that foremen are inappropriate for collective bargaining. So long as that holding is a law I do not think any unfavorable inferences should be piled in the record against the employer, for declining to encourage collective bargaining for supervision. That is the

644 basis of the whole line of questioning announced by Mr. Nelson himself and that is what I am objecting to.

Trial Examiner Jaffee: There is a broader basis for admission connected with what Mr. Nelson said. The past history and attempts to organize a foreman's organization is relevant here and if those attempts were made in the face of opposition by the Company, I think that is part of the picture itself. Of course, there is the question of

degree. It is hard to determine that in advance. He may answer.

Q. (By Mr. Nelson): You say that they told you something—where were you when you had this talk about the cut?

A. In Mr. Miller's office.

Q. Who was Mr. Miller?

A. Mr. Miller was my boss, now his title—

Q. I beg your pardon?

A. I don't know his title.

Q. How long had he been what you call your boss or the person giving you directions?

A. Oh, I would say approximately a year and a half.

Q. And you had been taking your directions from Mr. Miller for a year and a half?

A. That is right.

Q. Did you remain a foreman?

645 A. After I told Mr. Miller that I would take a chance in the employment department and gamble with another job I was no foreman.

Mr. Dahling: I did not get the answer.

Trial Examiner Jaffee: I got it but I did not understand it. Will you read the answer, please.

(Answer read.)

Q. (By Mr. Nelson): Have you ever been a foreman in the Packard plant from that time to this?

A. No.

Q. Can you fix the date and year of that occurrence?

A. Well, no I cannot.

Q. I mean the month and year?

A. I would not be sure.

Q. Have you continued to be employed at the Packard Company?

A. That is correct.

Q. In what capacity?

A. I am still doing electrical work.

Q. You say you are still doing it, are you doing it in a supervisory capacity?

A. No, as a working man.

Q. And you remained there as a working man ever since?

A. That is right.

Q. An hourly-rated employee?

646 Mr. Karasick: Mr. Nelson, I wonder if I could interrupt to suggest clarifying the witness' answer as to what he told Mr. Miller when he was told something in his office. I did not understand it and I am not sure the record will be clear.

Mr. Nelson: You mean you want that in greater detail? I am not concerned with that. If it ought to be more full I will be glad to do it.

Mr. Karasick: It was a mere suggestion.

Mr. Nelson: Thank you.

Q. (By Mr. Nelson): Mr. Dwyer, you worked yesterday, did you not?

A. That is right.

Q. What did you do yesterday?

A. I was working on panels, these panels which have to do with the different instruments, some are electrical and some are pressure instruments, but it all ties in with an electrical panel.

Q. What was your rate of pay?

A. $1.26 per hour.

Q. Are you a member of the UAW-CIO?

A. That is right.

Q. The Packard Local?

A. That is right.

Q. And have been since what time?

647 A. Oh, I would say from 1940.

Q. Mr. Dwyer, at the time you went into Mr. Miller's office, was there any complaint of your work or efficiency or ability or conduct whatsoever?

A. Never.

Q. Had you ever had any complaint against you as a foreman?

A. I never had any complaint against me as a foreman.

Q. You were a foreman how many years?

A. Approximately twenty-five years.

Q. And what is your present age?

A. Fifty-six.

Q. And you are apparently in very good health?

A. Well, I am up here.

Q. Now,—coming—

Trial Examiner Jaffee: I do not know whether that is non-sequitur or not.

The Witness: Well, I made it.

Mr. Karasick: Apparently it takes a strong individual to take the witness stand

Trial Examiner Jaffee: It takes an individual with fortitude to stay on it.

Mr. Nelson: I suppose the Examiner means physical fortitude.

Q. (By Mr. Nelson): Coming back to the conversa-
648 tion in Mr. Miller's office, had you had any previous conversation with Mr. Miller about the matter?

A. No, there was only a few words spoken. He told me—

Q. You tell us the best you can what those words were.

A. He told me, "We will have to put you down to $200.00 a month."

649 Q. What was your pay?

A. Approximately 260.

Q. Then what did you say?

A. I said, "Well, I don't know why I should take that, I have been with the Company approximately 35 years, been doing night jobs for, I would say, five years," and I says, "and there certainly must be more than that in this whole setup with only a few words I have to take a cut." So I says, "No, I won't but I'll take a gamble on the employment department," which means I could go over there and possibly get an executive job, but I didn't get that. I had to spend approximately 45 days running, running in and running back, to see the employment manager, who was Mr. Weiss at the time, and then I joined the Forty-Plus Club. That Club, I don't know whether you are acquainted with it or not.

Q. No, I am not.

Mr. Dahling: Mr. Examiner, just what has the Forty Club got to do with this proceeding?

Mr. Nelson: That is the way he got his job.

Q. (By Mr. Nelson) Is that right, Mr. Dwyer?

A. Yes, I am going to lead up to that.

Trial Examiner Jaffee: I know, but please do not pull the strings so far back.

Q. (By Mr. Nelson) Mr. Dwyer, are these the meas-
650 ures you took to get a job?

A. That's right; there was absolutely no jobs at Packard for me.

Q. So you took steps to get one and that included this Forty Plus Club?

A. Yes, and they contacted Packard for me.

Mr. Karasick: May I interrupt? If we are going to have it in the record, and I confess I do not know whether it is pertinent or not, I think we ought to have what happened to this man from the time he walked into Mr. Miller's Office. I think we ought to get that with clarity.

Mr. Nelson: I am consciously adopting the policy of letting this witness tell his story in his own way, as far as the Examiner will permit. I will bring him back to that, and I promise Mr. Karasick I will not overlook it.

Q. (By Mr. Nelson) Well, you finally got a job, is that right?

A. That's right.

Q. Now, come back to Mr. Miller's office. Have you told us all that was said at that time?

A. There was only a few words said.

Q. Yes, and you have told us that. Was anything else at all spoken?

A. Not a thing referring to me.

651 Q. All right, you went out and went to the employment office, apparently?

A. That's right.

Q. Then after some 45 days of efforts, including clubs, persons and personages, one thing and another, you got a job as a worker?

A. That's right.

Q. Do you remember how much pay you got, how much you got an hour when you went back?

A. No, I don't know offhand.

Q. You have never been a foreman at the Packard Company since?

A. No, sir.

Q. Mr. Dwyer, do you happen to know what happened to the several hundred other foremen similarly situated to you at that time?

Mr. Dahling: Mr. Examiner, we have one foreman testifying here now. If we are going to bring in a hundred more—

Mr. Nelson: (Interposing) Maybe two or three hundred.

Mr. Dahling: If this is considered competent, then, of course, we would have to ask permission for time to investigate each one of these cases and to bring in testimony on behalf of the Company covering each one of these instances. I do not know whether it is your intention, Mr. Examiner, to develop the hearing along that line, but if this type of testimony goes in, we have no other recourse.

652

Trial Examiner Jaffee: The question is, do you know. Do you?

The Witness: May I have that question again, please?

Q. (By Mr. Nelson) Do you know whether—

Mr. Dahling: (Interposing) Might I interrupt? If he says he does know of a hundred others, then we will be forced to ask him the names of the parties and the circumstances, so that the record will not contain statements which can be refuted. We had the same experience when we were before the War Labor Board and it took several weeks or months to chase down all of these so-called grievances, so that the Company could prove to the Board that they were non-existent. We have the same situation here.

Trial Examiner Jaffee: Will you read the question, please?

(Question read.)

The Witness: I haven't any idea.

Trial Examiner Jaffee: May I observe, that is why I am generally inclined to permit an answer in such cases, because a question which asks, "Do you know" usually ends up with much to do about nothing about half the time.

Mr. Dahling: But the other half of the time something might be thrown into the answer that would have to be refuted after great length.

653

Trial Examiner Jaffee: The mere answer stopping with "Yes" does no harm.

Mr. Dahling: Perhaps my objection came a little premature, but you understand my point?

Trial Examiner Jaffee: Yes.

Mr. Nelson: There are several hundred witnesses that we can bring in to testify on the same point. Or, you can bring in the Company records and we will have them testify to the records.

Mr. Dahling: I move that that statement of counsel be stricken from the record.

Trial Examiner Jaffee: It is stricken.

Mr. Nelson: Will you mark this Petitioner's Exhibit No. 30?

(Thereupon, the document above referred to was marked for identification as Petitioner's Exhibit No. 30.)

Q. (By Mr. Nelson) Mr. Dwyer, I show you Petitioner's Exhibit No. 30, and ask you whether when this Local 918 disbanded you received a demit, just like this (indicating)?

A. That's right.

Q. It does not bear your name, but you received a form just like it?

A. That's right.

Mr. Nelson: I offer the demit in evidence and I offer
654 it to counsel for examination.

Mr. Donovan: Are copies of this available for counsel?

Mr. Nelson: We will make it available and we will include the membership card with it.

Mr. Donovan: I take it that this exhibit, or these exhibits that come in on this line of questioning that Mr. Nelson is pursuing are under the continuing objection that counsel earlier registered?

Trial Examiner Jaffee: Yes.

Mr. Donovan: I do not like to keep doing that, but if this is received, then let the record show at this point that this is, on its face a transfer or clearance certificate from the CIO Union in question, or Mr. William Vallance, who sits behind counsel in the courtroom now, as the first vice-president of the Foreman's Association of America.

Mr. Nelson: Of the National organization.

Mr. Donovan: Who is the Petitioner in this case.

Mr. Nelson: That is correct.

Trial Examiner Jaffee: If you gentlemen will hand me that paper, I will be able to rule.

Mr. Nelson: I have been passing it around, Mr. Examiner, I assumed they wanted to state their objections before you examined it.

655 Trial Examiner Jaffee: Mr. Nelson, what did you call this paper?

Mr. Nelson: It is a demit. D-e-m-i-t. On disbanding the Local, they were given this slip of paper to indicate that they had been paid up in full and that they were eligible for membership in another Local.

Mr. Donovan: Well, it is a clearance.

Mr. Nelson: Yes, it is a clearance from Local 918. We used to call them a demit in the coal mines.

Mr. Karasick: Well, what is it entitled on the face of it? It is a transfer of clearance certificate, is it not?

Mr. Nelson: Yes, a transfer of clearance certificate, but in short parlance among Union men, it is a demit.

Trial Examiner Jaffee: Mr. Dwyer, I show you Petitioner's Exhibit Number 30, for identification, and call your attention to the fact that on it it says that the individual named on the paper is paid in full, I assume for dues, and that the particular Union is involved in disbanding and then on a line above, the word "date" appears, then follows the word or initials "eff.", which I assume means effective February 1, 1940. Do you see that?

The Witness: Yes.

Trial Examiner Jaffee: As I understood your earlier testimony, did you say that you had joined that earlier

656 Foreman's Association sometime around November or December of 1939?

The Witness: 1939.

Trial Examiner Jaffee: Did you also testimy thereafter that it disbanded a few years after you joined it?

The Witness: That's as far as I know. Now, I don't know when I receievd my demit. I don't know whether they had to do with all individuals or not.

Trial Examiner Jaffee: Does this paper refresh your recollection as to when it disbanded?

The Witness: No, it does not.

Trial Examiner Jaffee: All right, it is received in evidence.

(The document heretofore marked for identification as Petitioner's Exhibit No. 30, was received in evidence.)

Mr. Nelson: You may cross examine the witness. I ought to say to counsel and to the Examiner that I expect to offer a witness who has more knowledge of the organization itself than this witness, and I did not offer Mr. Dwyer on the history of the organization. I do not believe he knows much about it, but I have a witness whom I will offer on the history briefly.

Cross-Examination,

657 Q. (By Mr. Dahling) Mr. Dwyer, you testified that you became an assistant foreman and you fixed the date as 1911?

A. I fixed the date approximately.

Q. Yes, approximately 1911. You had under your supervision 500 men?

A. No, I didn't say that. I said during my cycle as a foreman.

Q. I do not quite understand your answer then. When you were assistant foreman, how many men did you have under your supervision?

A. Oh, I would say approximately 20.

Q. Approximately 20?

A. In that group.

Q. And did you have a superior over you in that particular department?

A. Yes.

Q. What would be the title of that superior?

A. Foreman.

Q. And did the foreman also have a superior in that particular department?

A. Not that I know of.

Q. There was no general foreman in that department?

A. Not in that department.

Q. You remained an assistant foreman up until 1917, approximately?

658 A. Approximately.

Q. And you say you had at that time two or three

departments over which you were the supervisor or foreman?

A. Not while I was assistant foreman.

Q. No, I am sorry, you must have misunderstood my question. I will restate it. You were made a foreman in approximately 1917?

A. Thereabouts.

Q. You testified then, that as a foreman you had two or three departments under your supervision?

A. That's correct.

Q. What departments were those?

A. They were the N. A. Department.

Q. What does that mean?

A. That meant the body department.

Q. The entire body department was under your supervision?

A. No, that particular setup that had to do with the N. A. Department. It was body assembling.

Q. And what was your particular function or the particular function of the men supervised by you in that department?

A. What do you mean?

Q. Well, what did they do? As foreman, you supervised someone, did you not?

A. That's right.

659 Q. You supervised some workers, did you not?

A. That's right.

Q. And what did those workers do in the N. A. Department?

A. The N. A. Department had to do with putting electrical panels into the body, and other small assemblies.

Q. When you say electrical panels, are those the panels that are in front of a car, in the dashboard?

A. It has to do with the lighting switches.

Q. And also, you say small assemblies?

A. Small assemblies.

Q. What did they do, was that further assemblies for lights?

A. Oil lines.

Q. Well, that has nothing to do with the N. A. Department?

A. That has to do with the N. A. Department.

Q. All right, but did you have anything to do with the supervision over that?

A. Yes.

Q. Then your entire work was not electrical?

A. Then let us get out of the N. A. Department.

Q. No, let us stay in the N. A. Department. Did you say you had something to do with oil lines?

A. They are a part of the dash or instrument board assembly.

Q. Your work was limited to that part of the oil
660 line? Board assembly?

A. That's right.

Q. Then, what other work did the workmen under your supervision do in the N. A. Department?

A. Well, attaching panels, attaching the oil lines, these different insulations that used to have to go in at that particular place, brackets, and so forth.

Q. Was that limited to the panel?

A. It was limited to the N. A. Department.

Q. I am asking you to limit your testimony, Witness, to the work done by the workers under your supervision in the N. A. Department. It is my understanding, of course, that there were more functions carried on by the N. A. Department than were performed by the workers under you. That is correct, is it not?

A. There was work performed there, different assemblies.

Q. And you only had supervision of the men working on one particular type of assembly, is that right?

A. On that particular body that came through that department. Now, there are several other little items that go in this thing. In order to complete this thing like I would have to, I would have to have an operation sheet with all those particular piece number on them.

Q. You performed your duties by supervising the carrying into effect of the steps set forth on this processing sheet?

661 A. That is correct; operation sheet.

Q. Operation sheet. And the men under your supervision, the workers under your superv' 'on, did a part of those operations set forth on that operation sheet?

A. What the department operations called for, that was what had to be done on the job.

Q. Yes, and other foremen and other workers performed other functions in accordance with this operation sheet?

A. That particular operation sheet had to do with me only.

Q. But there were other operation sheets for other workers and foremen in the N. A. Division, were there not?

A. Not in the N. A. Division.

Q. Not in the N. A. Division?

A. No.

Q. How many men did you have under your supervision in the N. A. Division?

A. I would say at one time 102 people.

Q. When you say they were under your division, you were then a foreman, you had no general foreman at that time over you?

A. Well, I don't know anything about what the titles were. I know there was an assistant foreman. Correction, please. There was an assistant superintendent and a superintendent.

662 Q. In this particular department?

A. No, over me.

Q. Over you?

A. Yes.

Q. Did you have any assistant foremen under you?

A. Yes.

Q. How many assistant foremen did you have under you?

A. I would say—he had no recognition, we called him a jobsetter or a leader or something like that.

Q. I am not asking you that. I am asking you whether you had any persons designated as assistant foremen under your supervision?

A. Not in the N. A. Department.

Q. Not in the N. A. Department?

A. No.

Q. The workers in the N. A. Department, doing this assembly job, did each one of them have a particular job to do and it would then pass on to another workman?

A. The body would pass along, is that right?

Q. And these workmen had a repetitive job to do? They did the same operation on each car as it came through?

A. Several operations, as the time allowed.

Q. But they were supposed to do the same operations on each car as it went by and the same operation?

A. If the time allowed them to do it on each body
663 as it went along.

Q. If the time did not allow them to do it, of course, that clogged the line?

A. If they had no time to do it there would be somebody else to help them out.

Q. The point I am making is that those were repetitive jobs, the same process was carried through on each car as it came through, by your workers?

A. Well, I wouldn't say that. It all depends on the time. If there were seven bodies that came through in one hour and then possibly two bodies came through the next hour all of those people could not work on the two bodies.

Q. But each one of your workers had a set job to do as these bodies came through and repeated that job as the bodies went down the line. If he had time he got through with it, if he didn't, somebody further down the line had to pick up that job?

A. After they were told what to do.

Q. And you were the one who instructed them what to do?

A. That is right.

Q. You say there were about 100 men in that department?

A. At one time.

Q. What other department did you have?
664 A. K. B. Department.

Q. K. B. Department?

A. Yes. The K. B. Department was the department that had to do with receiving outside bodies, that is not the Receiving Department. These bodies simply came into this department for stripping, which I would say was things that had to be taken off the body to prepare it for the production line, or any particular operation there that

could be done that would avoid delays or something like that along the line.

Q. When you say the bodies came in from outside sources, you mean that they were not manufactured in the Packard Motor Car Company plant?

A. That is right.

Q. And that they might be purchased from a body company on the outside?

A. Yes.

Q. And they came into this division, you say, and you stripped them? What did you do?

A. They had to be made—there were different covers taken off of them and things like that.

Q. You mean paper covers and packing that was around them to protect them?

A. It could be.

Q. How many men did you have in that department?

665 A. I would say about one time maybe twelve.

Q. You had twelve men?

A. Approximately.

Q. And these twelve men just removed the outside packing and covering from these bodies that came in from the outside?

A. Yes, and there were other operations. Many of them, but I do not recall them now.

Q. What were the other operations?

A. One was when the body came in it had a celluloid—it happened to be a rubberized cover on the body in those days and not all steel covers at that time. It had a celluloid all around it to protect it when they were working on that particular part of the body to keep the top from getting damaged. They would have to cut that celluloid all the way around.

Q. Essentially, however, this department merely prepared the bodies that came in from the outside, by removing the celluloid covering so that it could be placed on the assembly line?

A. That is right.

Q. Of what other department did you have charge?

A. Of the F. E. Department.

Q. What is the F. E. Department?

A. It had all to do with the electrical assembling
666 installation, repairing, and so forth.

Q. How many workers did you have under your jurisdiction there?

A. I would say approximately at that time we had in the peak production that I am talking about—I would say around about 100 people.

Q. When you speak of peak production, will you fix the time when you had peak production?

A. No, I couldn't.

Q. Would you have peak production each year?

A. You would have peak production because if you establish a high record that is peak.

Q. Now, how long would that period of peak production last?

A. Well, that all depends on sales.

Q. Well, the more production the more men you needed in your department, I assume?

A. That is right.

Q. Will you give us an average? You say you had 100 men at the peak production. How many would you have at—well, let's call it low production?

A. Well, you can call low production one job. Now you can call it five or ten or fifteen or twenty or twenty-five and go up. I cannot give you any information like that. I wouldn't be in a position to estimate the approxi-
667 mate number of men I might need.

Q. You would not be in a position to estimate the approximate number of men you need?

A. I don't think I could because you plan your production according to the amount of jobs that you are going to have through that department and your help goes accordingly.

Q. I am not asking you to answer it if you cannot, Mr. Dwyer. The number of men would run from one to 100, depending on production?

A. Well, that's common sense.

Q. And that is your answer?

A. That is your answer.

Q. What is your answer?

A. My answer is that I do not know. We don't know at that time and we didn't know from one month to another what our production really was.

Q. You say "at that time." What time is that?

A. I don't know. It is in the Packard record, if you want to go back that way.

Q. This was during the time when Packard was making automobiles?

A. That is correct.

Q. And that would cover what period of time? Will you give us a general period of time?

668 A. Between 1905, if you want the period of time, and 1939.

Q. And you weren't a foreman in 1905?

A. No.

Q. And you weren't in charge of the F. E. Department in 1905?

A. No.

Q. Well, my questions concern the F. E. Department, Mr. Dwyer, and you became a foreman there in, you say, 1917?

A. We have already gone over that.

Q. I am asking you if that is right?

A. Approximately.

Q. So for the period of time you are referring to—1917 until what date in 1939?

A. A foreman?

Q. Yes.

A. In through that set-up.

Q. Did you have any assistant foremen in the F. E. Department?

A. In the F. E. Department we had one assistant.

Q. Was there a general foreman in that department?

A. No.

Q. Now, you didn't like the fact that you, Mr. Dwyer, that you remained a foreman for this period of time?

A. What do you mean I didn't like it?

669 Q. Well, didn't you resent the fact that you were not made a general foreman?

A. No, no; I didn't.

Q. And you were perfectly satisfied to remain on your job?

A. I wasn't satisfied but I didn't resent it.

Q. From the tenor of your testimony and the tone of your voice on direct examination you indicated to me that you held quite a bit of resentment because of the fact that you had not been promoted.

A. Well, if I was an employee of a company thirty-five years and I was called in that I was going to be given a cut—

Q. You didn't like that?

A. Just a minute. And then all this boss of mine said was, "There it is"—

Q. And that is—

A. Now, just a minute—

Q. Just a moment, you haven't answered my question—

Trial Examiner Jaffee: I think the witness is entitled to finish, in view of the way you asked the question.

Mr. Dahling: I am sorry if the question is confusing. I would like to restate it.

Trial Examiner Jaffee: I think the witness is entitled to complete his answer.

670 The Witness: I was called in after thirty-five years of continuous service and during that time, of course, you have got the record and the record is still at Packard. It was only a few words that were said and I had to take that cut or gamble with something else. My idea is that if I had something back of me, some security or something like that, why, that wouldn't happen. A man with a thirty-five year record is something to look forward to.

Mr. Dahling: I move, Mr. Examiner, that this witness' answer, if it is such, be stricken. It certainly is not responsive to any question that was asked.

Trial Examiner Jaffee: The answer may remain.

Q. (By Mr. Dahling): You felt that you had sufficient ability to be promoted to a general foremanship, didn't you?

A. I have still got that ability.

Q. So, when you were told that the Packard Company

could not use you as a foreman any longer, you had an opportunity to go out and demonstrate that ability elsewhere?

A. They didn't tell me.

Q. But you did have the opportunity to go out, if you had the ability, and get a like job somewhere else, didn't you?

A. I can do that tomorrow.

671 Q. If you felt you were so unfairly dealt with, then why did you take a job at Packard's after you were told that they could not keep you as a foreman any longer?

A. Because if I got back to Packard I would have seniority, which I did not have when I was a foreman.

Q. And that was in the CIO?

A. That was in the CIO, and that I have today.

Q. You feel, I suppose, that if you had—if the foremen had collective bargaining and you were there thirty-five years, you would be automatically promoted?

A. No, I would have something to say, though.

Q. What would you have to say?

A. I would have my particular record.

Q. Well, you have that now, haven't you?

A. As a foreman, as is.

Q. But your idea would be that if you had collective bargaining and you were there thirty-five years, through the force of the collective bargaining, you could make them make you a general foreman?

A. I couldn't make them do anything.

Q. Then what is your purpose in believing in unionism and collective bargaining? Didn't that go that far?

A. My meaning of unionism, as you put it, is security, is job protection, and you cannot get away from it in my case.

672 Q. Well, you are talking about job protection, how do you get that job protection?

A. Well, you would at least have a hearing about your case, wouldn't you? I didn't have a hearing.

Q. But you had an opportunity to present your arguments to management, didn't you?

A. No, I did not have.

Q. You mean Mr. Miller just said, "This is it, out you go"?

A. That is correct.

Q. Did you attempt to state your case to him?

A. I did.

Q. Then you did state your case to him, didn't you?

A. No, I just told him, "Well, there is only one thing for me to do and that is gamble with the Employment Department."

Q. Getting back to this security business, you feel if you had collective bargaining you could use the force of this Union to make the Company retain you in your job because you had been there thirty-five years?

A. No, if we had security your seniority would take care of that. As a foreman I did not have no seniority, although I was with the Company thirty-five years.

Q. You believe that a foreman should have seniority?

A. In my case, yes.

Q. And, therefore, if you had collective bargaining
673 that would be one of the things you would have?

A. I would have seniority.

Q. And the Company could not have demoted you because of your seniority?

A. I wouldn't say that, they can do anything.

Q. I don't quite understand this security proposition you are bringing up.

A. Your seniority years are the years you put there and they are secure, is that correct?

Q. Well, I am asking you.

A. Well, I am asking you, too. You are putting the question that way. After thirty-five years you should have something. In other words, you shouldn't just be tripped over and shoved around, you at least ought to have a hearing.

Q. The point is that you feel that if you had this Union you could, we'll say, force the Company to give you a hearing?

A. That would automatically take care of itself in seniority.

Q. In other words, you would insist upon a seniority provision in your contract?

A. You are putting that in.

Q. I am asking you, on this collective bargaining business, you feel that there should be a seniority

674 provision in the contract?

A. If you had collective bargaining both sides have an argument and in my case there was only one argument and that was the Company's argument.

Q. If you had collective bargaining you would have the group behind you to argue for you, isn't that so?

A. I would at least have a chance to say yes or no.

Q. Didn't you have a chance to say yes or no to Mr. Miller?

A. I said yes and no to him a lot of times.

Q. Do you know Mr. Miller?

A. Yes.

Q. You are not unfriendly with him?

A. No.

Q. And he is not unfriendly with you?

A. No.

Q. And you get along all right today?

A. Yes, I certainly like the gentleman. We may have had differences of opinion.

Q. And there was that difference of opinion at the time you went in as to your capacity and ability?

A. That could be about anything.

Q. He may have disagreed with you as to your classification?

A. He didn't say so.

675 Q. There is a possibility that he might not say so, isn't that true?

A. There is an executive for you. Why don't they say those things?

Q. Probably not to hurt your feelings.

A. When we build ourselves up into a few years, as I am, we can take anything they give us, and we do.

Q. You do take it but you don't like it?

A. We don't say we don't like it, we fight back.

Q. And that is why you want this organization?

A. I want the organization? I got an organization. I am in the CIO.

Q. And that organization fights for you?

A. Correct.

Q. And you feel that if the foremen should have an organization—so that if one of the foremen only had ten years' seniority and another had eight, you would fight to see that the man who had ten years' seniority got the job?

A. Possibility.

Q. Who decides the matter of ability?

A. Your own self has a lot to do with it by what you can show.

Q. And that is decided by the Union or the Company?

A. That is a question.

676 Q. That is quite a big question, isn't it?

A. You bet, that is why we are here today.

Mr. Dahling: No further questions.

Trial Examiner Jaffee: Are there any further questions of this witness?

Mr. Nelson: No questions.

Mr. Karasick: No questions.

Trial Examiner Jaffee: I have one or two questions that I want to clear up.

Q. (By Trial Examiner Jaffee): Mr. Dwyer, when did you join the UAW-CIO?

A. I would say some time in 1940.

Q. That is to say, at the time you became a working man again?

A. Shortly after.

Q. Did you testify that a general foreman has to do with more than one department?

A. Well, a general foreman—I think a general foreman is a man who is given that rank when he has several departments.

Q. Do you then mean to testify as well that every general foreman has more than one department?

A. No, I wouldn't say that.

Trial Examiner Jaffee: Are there any further questions of this witness?

677 Mr. Nelson: No further questions.

Mr. Dahling: No questions.

Mr. Karasick: No questions.

Trial Examiner Jaffee: Very well, the witness is excused.

(Witness excused.)

Trial Examiner Jaffee: We will take a five-minute recess at this time.

(Recess.)

After Recess.

Trial Examiner Jaffee: Let us proceed, gentlemen.

Mr. Nelson: Mr. James Byerley.

Trial Examiner Jaffee: What is his name?

Mr. Nelson: Mr. James Byerley, B-y-e-r-l-e-y.

JAMES BYERLEY,

a witness called by and on behalf of the Petitioning Union, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Nelson): Your address is what, Mr. Byerley?

A. 12 West Canfield.

Q. Is that in the City of Detroit?

A. Yes, sir.

Q. How long have you lived here, about?

A. About nineteen years.

678 Q. You are a married man with a family?

A. Yes, sir.

Q. Are you presently employed by the Packard Motor Car Company?

A. Yes, sir.

Q. How long have you been employed there?

A. Nine years and ten months.

Q. When you started there, what work were you doing?

A. I started as an arc welder.

Q. Had you had some training for that work.

A. Previously, over at the Chrysler Corporation.

Q. As maintenance and production workers?

A. Yes.

Trial Examiner Jaffee: Is that right?

The Witness: Yes.

Mr. Nelson: That is all.

Recross-Examination.

Q. (By Mr. Dahling) I am sorry for the delay, Mr. Examiner. We had some records we wished to look at here. Witness, would you say that you were originally employed by the Packard Motor Company in February 22, 1935?

A. Yes, sir.

Q. And you were made a foreman in the XLE Department about July 28, 1939?

A. Approximately there, yes.

Q. Then when did you go back to the production, approximately?

698 A. Eighteen months later.

Q. That was approximately May 9, 1941?

A. Yes.

Q. And you are now working in the aircraft division?

A. Yes.

Mr. Dahling: That is all.

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Mr. Nelson: Mr. Examiner, it is the best information I can get as to the connection of the Packard supervisory force with Local 918 to the effect that it began in October, 1939 and concluded sometime in January of 1940. It is also my information that the Local had a longer life than that because the Packard men were not the first supervisory force in the Local. I am not able to fix the time with sufficient certainty to hazard a statement on that.

Trial Examiner Jaffee: Mr. Witness, have you heard the statement of counsel just made?

The Witness: Yes.

Trial Examiner Jaffee: What do you say about it?

The Witness: It is correct as far as my knowledge is concerned.

Mr. Dahling: As far as your knowledge as to the Packard Motor Company or to the other company?

699 The Witness: As to the Packard Motor Company.

Trial Examiner Jaffee: Do you know whether or not it existed for a longer period in other companies?

The Witness: I wouldn't be able to say for sure, it would be hearsay if I did.

Trial Examiner Jaffee: Then with that exception you adopt counsel's statement as your own?

The Witness: Yes.

Mr. Donovan: To the best of your knowledge, and speaking generally and without pinning you down to any particular date, the disbanding of that old Packard supervisory Local was around January, 1940, was it not?

The Witness: Yes.

Mr. Donovan: That is all.

Mr. Nelson: If they are through with this witness, I will excuse him.

Trial Examiner Jaffee: They apparently are. The witness is excused.

(Witness excused.)

Mr. Nelson: I call Mr. W. T. Grant.

Trial Examiner Jaffee: Before Mr. Grant testifies, I would like to ask you, Mr. Nelson, for the record, assume for the time being—which assumption is not a finding of fact and of course, if I may add parenthetically, I do not make findings of fact in this case anyway—assuming

700 for the time being that Packard was opposed to the organization of foremen—to that extent, there seems to be no disagreement. Assuming further that it was violently opposed to it, to the extent that it demoted certain foremen because of it—and that is the only assumption for the time being—what does it add to this particular hearing?

Mr. Nelson: The knowledge of it adds reasons for the action taken by these foremen that is criticized here by counsel.

Trial Examiner Jaffee: What reasons?

Mr. Nelson: They criticize the strike and strikes, and they criticize what they characterize as extreme measures.

Q. You had previous training and experience?

A. Yes, sir.

Q. You were employed at the Chrysler Corporation how long?

A. Seven years.

Q. As an arc welder?

A. Arc welder and torch solderer.

Q. That was a production job you had to start with at Packard's?

A. Yes, sir.

Q. Afterwards, were you promoted to supervision at Packard's?

A. Yes, sir.

679 Q. How long after you started there?

A. I will say five years, five and a half years.

Q. To what position were you promoted?

A. Assistant foreman.

Q. In what line of work?

A. Body assembly.

Q. Did that involve this welding and soldering that you have referred to?

A. Yes, sir.

Q. How many men did you have under your supervision?

A. 85.

Q. Were they all skilled men in that line?

A. We wasn't all welding; we were arc welding and gas welding, too.

Q. It was an arc welding and soldering job?

A. No, not all of it; some of it was, yes.

Q. But it involved men with skill, did it?

A. Yes, sir.

Q. Who had some training and experience?

A. Yes, sir.

Q. What was the year that you were promoted to assistant foreman?

A. 1940.

Q. Did you advance beyond that in rank?

A. No, sir.

680 Q. You remained as assistant foreman until when?

A. 1941.

Q. Did you become a member of Local 981, the Supervisors local of the CIO?

A. Yes, sir.

Q. Do you have a receipt or your card?

A. No, I don't.

Q. Do you remember when you became a member of that local?

A. I would say it was just when we started the new model in 1940.

Q. And you were at that time an assistant foreman at Packard's?

A. Yes, sir.

Q. And thereby qualified as a member?

A. Yes, sir.

Q. Do you remember what your wage or salary was?

A. Yes, sir.

Q. What was it?

A. $1.25.

Q. An hour?

A. Yes, sir.

Q. You were an hourly-rated assistant foreman?

A. Yes, sir.

Q. It averaged about what, weekly or monthly?

681 A. I would say—well, forty hours a week we run.

Q. How did you happen to become a member of Local 918?

Mr. Dahling: I object, Mr. Examiner, as being incompetent and irrelevant, the reasons why he became a member of that organization.

Mr. Nelson: I did not mean to ask him that. I meant, did he hunt up that local or did somebody solicit him.

Trial Examiner Jaffee: He may answer.

The Witness: Well, it looked like a pretty good organization, so I joined it. I needed protection the same as everybody else.

Mr. Dahling: May the last part of the answer be stricken, Mr. Examiner?

Trial Examiner Jaffee: It may be stricken, because it was not responsive to counsel's question.

Q. (By Mr. Nelson): At that time, did you belong to any other labor organization, at the time you joined Local 918?

A. Yes, sir.

Q. What local were you a member of?

A. UAW-CIO, Local 190.

Q. Is that the Packard Local?

A. Yes, sir.

Q. You had become a member of that when you
682 were a production worker?

A. Yes, sir.

Q. Did you take your demit from that Local 190 to Local 918, or did you continue in both?

A. No, sir, I got a demit from Local 190.

Q. To Local 918?

A. Yes, sir.

Q. Did you attend the meetings of Local 918?

A. Yes, sir.

Q. Were you an officer?

A. No, sir.

Q. Do you know whether Local 918 was limited to supervisors at Packard's?

A. No, sir, it wasn't.

Q. What other employers' supervisors were members of that Local?

A. Well, we had a branch, you can call it, of our own at Packard.

Q. You had a branch, a Packard branch of it?

A. Yes, sir.

Mr. Dahling: Mr. Examiner, may I suggest the records and Constitution of this particular organization would be the best evidence as to its membership, functions, and so forth, and eligibility? This witness is testifying as to the
683 qualifications of members, and so forth. If that is not available, of course, that is another thing.

Mr. Nelson: I must say to the Examiner that I personally have made a search for the officers and the records of this local. I am informed that Mr. Bolds, who was president, has been in Europe and North Africa for a year or two. The vice-president, likewise, is in the armed services. I located the secretary-treasurer who was with-

out records and who was unable to give me the location of the records. I am continuing the search for the records of this Local, so far, without any success at all. I have offered this oral testimony because I was unable to obtain anything more than the two exhibits, Nos. 29 and 30, the card and the demit I have offered. I, obviously, would have produced the records if I could. I am continuing the effort, but I would like, in the meantime, to offer this witness briefly on the organization.

Mr. Dahling: Well, Mr. Examiner, if this witness can qualify, I am not taking any exception to counsel's statement that he has made an investigation. If counsel states he has, that is accepted by me. I am not questioning that at all. But unless this witness has read the Constitution or read the by-laws, and can qualify for this secondary evidence, as to the contents, then I must, of course, object to the questions.

Mr. Nelson: I am not offering that; I am offering
684 the functions that he observed himself, and I will limit myself to that.

Trial Examiner Jaffee: He may answer.

Q. (By Mr. Nelson): Do you know whether in addition to this Packard Chapter there was in this Local other employer supervision?

A. Yes, sir, there was.

Q. Which ones?

A. Murray's was in it, Chrysler Corporation, Kelsey-Hayes, those are the ones I know of personally. There was others in it, but I can't recall the names of them.

Q. Can you say whether Briggs was?

A. I wouldn't say for sure.

Mr. Donovan: What companies did you mention besides Chrysler's?

Trial Examiner Jaffee: The Murray Corporation, Chrysler Corporation and Kelsey-Hayes.

Q. (By Mr. Nelson): Those are the ones you know of?

A. Yes, sir.

Q. But there may have been others that you are not aware of, is that right?

A. Yes, sir.

Trial Examiner Jaffee: But it was limited to supervisors?

The Witness: Yes, sir.

685 Q. (By Mr. Nelson): Were you a member when the Local 918 disbanded?

A. Yes, sir.

Q. Do you know what reasons for the disbandment were given? Just answer yes or no.

A. Yes.

Q. What were they?

A. They took the charter away when the Dodge Company had their strike. The Charter was taken away from us at that time.

Q. And you disbanded?

A. Yes, sir.

Q. You continued as a foreman, did you, at Packard's?

A. Yes, sir.

Q. For how long?

A. About six months.

Q. Then what happened to you?

A. In the change of models, they give me this job on production.

Q. As an hourly-rated production worker?

Mr. Dahling: Six months after what date?

Mr. Nelson: Six months after the disbandment of Local 918.

Q. (By Mr. Nelson): Is that correct, witness?

A. Yes, sir.

686 Q. What was the work that you were then given?

A. I was torch welding then.

Q. That was as a production worker?

A. Yes, sir.

Q. Have you had supervision, at any time since you undertook this work last mentioned?

A. No, sir.

Q. You have never since been a foreman?

A. No, sir.

Q. Are you a member of any labor organization?

A. Yes, sir.

Q. And of which one?

A. UAW-CIO, Local 190.

Q. When did you become a member of it again?

A. Right after I went off from supervision.

Q. Now, let me ask you, Mr. Byerley, if you know of any other foremen at the Packard Company plant who were foremen prior to the organization and the disbandment—prior to the disbandment of Local 918, and who have never since been foremen in the plant and have continued in the plant as employees?

A. Yes, sir.

Q. Who were they?

Mr. Dahling: I object, Mr. Examiner—

Trial Examiner Jaffee (Interposing): Just a minute.

687 May I have the last two questions and answer read? (Questions and answer read.)

Mr. Karasick: I object, Mr. Examiner.

Trial Examiner Jaffee: Just a minute, I am trying to understand the question.

Mr. Karasick: That is why I am objecting, Mr. Examiner.

Mr. Nelson: May I withdraw it? I will withdraw both of those last questions.

Trial Examiner Jaffee: Very well.

Q. (By Mr. Nelson): Mr. Byerley, do you know any men who, prior to the disbandment of Local 918, were employed by the Packard Motor Company as foremen or supervisors who have remained in the employment of the Packard Motor Company from the time of the disbandment through the present time and who have never since the disbandment acted as supervisors at Packard's?

A. Yes, sir.

Q. How many?

Mr. Dahling: The objection we have made, Mr. Examiner, of course, still stands. If counsel for the petitioner is seeking through this testimony to leave the inference that these people were demoted because of thir activities in this particular organization, we will be forced

688 to go in and find out their names and check every case and produce testimony.

Trial Examiner Jaffee: He may answer.

The Witness: I couldn't say offhand. I know of at least ten of them in the shop today.

Q. (By Mr. Nelson): What do you say on this question as to whether they were demoted because of their membership in Local 918, since it has been raised by counsel?

Mr. Dahling: Mr. Examiner, if this witness knows.

Mr. Nelson: Yes.

Q. (By Mr. Nelson): If you know.

A. I couldn't say whether it was on account of belonging to the Local or because of organization or not, I couldn't say.

Q. In either case, you could not say?

A. No, sir.

Q. Were there any complaints against your work as a supervisor?

A. Not to my knowledge.

Q. None that was ever brought to your attention?

A. No, sir, it wasn't on my card when they transferred me back on production.

Trial Examiner Jaffee: You say you were changed after the model was changed?

The Witness: Just before they finished the model I was changed back. They brought another man down from another department.

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Q. (By Mr. Nelson): And put him in charge of your job?

A. Yes, sir.

Q. Now, what do you say as to whether knowledge of what happened to these ten foremen you have mentioned, and yourself, has spread throughout the plant?

Trial Examiner Jaffee: You mean, spread at that time?

Mr. Nelson: At that time, yes.

A. Spread all over. Everybody recognized it.

Q. (By Mr. Nelson): By "everybody" you mean what?

A. Well, both production and the men that didn't get back on supervision jobs when the jobs opened up.

Mr. Donovan: I object to the question and answer and ask that they be stricken. It is a conclusion that the witness is given. Obviously, it could not be within his knowledge what is in the minds of the Packard Motor Company employees, which he has taken in one sweep in answering the question, which was equally objectionable as the answer.

Mr. Nelson: I would like to ask one more question.

Q. (By Mr. Nelson): Have you discussed this with the men in the plant?

A. Yes, sir.

690 Trial Examiner Jaffee: Well, it is broad, but I think everybody understands how much weight to give to that type of answer.

Q. (By Mr. Nelson): You are still working there, are you not?

A. Yes, sir.

Q. And you have now accumulated some seniority as a production worker?

A. Yes, sir.

Q. In the CIO?

A. Yes, sir.

Mr. Nelson: That is all. I offer the witness for cross-examination.

Mr. Dahling: No questions, Mr. Examiner.

Trial Examiner Jaffee: The witness is excused.

Mr. Karasick: Just one moment, please.

Cross-Examination.

Q. (By Mr. Karasick): Mr. Witness, you said the Charter of Local 918 was taken away at the time of the Dodge strike?

A. Yes.

Q. Who took it away?

A. John L. Lewis.

Q. And that caused the Local to disband?

A. Yes, sir.

691 Q. Following that, was there any organization embracing foremen at the Packard Motor Car Company up to the time the Foreman's Association was organized?

A. Not to my knowledge.

Mr. Karasick: That is all.

Redirect Examination.

Q. (By Mr. Nelson): Mr. Byerley, do you know how many men have been made foremen in your line of work since you were demoted at the Packard Motor Company?

A. Since war production?

Q. Yes.

A. Since war production my line of work is not like it was, as far as that is concerned. There have been a lot of promotions that have been made.

Q. But you have not had any of them?

A. No, not yet.

Q. Promotions of other men from daily workers or hourly-rated workers?

A. Yes, sir.

Q. To other positions?

A. Assistant foremen, yes, sir.

Q. But you have not had any of those promotions?

A. No, sir.

Q. And none of these ten men you know have had any promotions?

692 A. No, sir.

Q. You say "a lot of men have been promoted." What do you mean by that? I don't know what the word "lot" would mean.

A. Well, I would say twelve or fifteen that I know of personally.

Q. You had never been a foreman before?

A. That's right.

Mr. Nelson: That is all.

Mr. Dahling: Mr. Examiner, I would like to ask a few questions.

Trial Examiner Jaffee: Very well.

Recross-Examination.

Q. (By Mr. Dahling): Can you give us the names of the ten men you mentioned?

A. I couldn't do it offhand.

Q. Can you give us the names of any of them?

A. I can give you the nickname of a few of them; that's all I know.

Q. Do you know them quite well?

A. I know them quite well, yes; some of them worked for me.

Q. Work for you now?

A. No, when I was assistant foreman, I mean.

Q. Were they assistant foremen, also?

693 A. Not then, no.

Q. When were they made assistant foremen?

A. After the war started.

Q. That was after Local 918 was disbanded?

A. Yes, sir.

Q. So your testimony as to these people having been demoted refers to a period of time after the disbandment of Local 918?

A. You said demoted?

Q. Yes.

A. I was demoted after 918 disbanded.

Q. Well, these other foremen, were they demoted after that period, also?

A. Yes, sir.

Q. Can you secure their names?

A. I imagine a person could get them easy enough.

Q. Will you secure their names and furnish them to counsel for the petitioner?

Mr. Nelson: I will join in asking him to do that.

The Witness: I will see if we can get them.

Q. (By Mr. Dahling): Could you fix the date when Local 918 was finally disbanded, approximately, to the best of your knowledge?

A. No, sir, I couldn't say that. At the time it disbanded, I know was about two weeks after Dodge

694 had that big strike of theirs.

Q. You do not recall the year?

A. In 1940, wasn't it?

Q. In 1940?

A. Yes, sir.

Q. And it would be about two weeks after the beginning of that strike?

A. No, sir, it was after the strike was ended.

Q. Oh, after the strike was ended?

A. Yes, sir.

Mr. Dahling: No further questions.

Redirect Examination.

Q. (By Mr. Nelson): While you are on that, is it a fact that the disbandment grew out of some difficulty in settling that strike?

A. Yes.

Q. And bringing it to a close?

A. Yes, sir.

Q. Because I want—

Mr. Donovan (Interposing): Just a minute, I will ask if the witness knows the reasons.

Mr. Nelson: Very well.

Q. (By Mr. Nelson): Tell us what you know about that.

Mr. Donovan: From his personal knowledge. And I still insist upon our continuing objection.

695 Mr. Nelson: Very well.

Q. (By Mr. Nelson): Tell us what you know as an active member in Local 918, the Packard Division, of the reasons for the disbandment of that Local.

Mr. Dahling: Just a minute, Mr. Examiner.

Q. (By Mr. Nelson): Particularly with reference to the Chrysler strike.

Mr. Dahling: If he was present at any meetings where the strike was being discussed, that is one thing. But if this is hearsay, that is, he was told by someone, that is another thing. I do not think from the form of the question we can determine whether or not this is hearsay.

Q. (By Mr. Nelson): Were you present at meetings where the reasons were discussed?

A. Only in our own local, yes.

Q. What were the reasons given your local?

A. Given our local?

Q. Yes.

A. The foremen at the Dodge Truck plant wanted to rehire some foremen that had been discharged out there,

and Dodge refused to do it, and John L. Lewis was having trouble settling that strike at Dodge's. He just took our charter away from us.

696 Q. Didn't insist on the re-employment of foremen?

A. No, sir.

Q. Just disbanded you and left you?

A. Yes, left us out in the cold.

Q. And took care of the maintenance and production workers?

A. Yes, sir.

Mr. Nelson: I think that is all.

Mr. Karasick: No questions.

Trial Examiner Jaffee: I am still a little bit unclear, Mr. Byerley, about these ten men.

Q. (By Trial Examiner Jaffee): As I understand it, when Local 918 disbanded, they were not assistant foremen?

A. They were at that time, yes, the first ones were, yes, the last question asked merely about the men that had been advanced. They wasn't members of it.

Q. You referred to ten men.

A. Yes.

Q. Were they assistant foremen at the time Local 918 disbanded?

A. Yes.

Q. There came a time therefore, after—if I understand your testimony—when they no longer were assistant foremen?

A. Yes.

697 Q. And were instead production or maintenance workers, is that right?

A. Yes.

Trial Examiner Jaffee: Any further questions of this witness?

Redirect Examination.

Q. (By Mr. Nelson) And in addition have continued there to the present time?

A. Yes.

I think these men were entitled to act within the scope of knowledge of not only what the Company pronounced as a policy, but what it demonstrated it was ready to do.

Trial Examiner Jaffee: As I understand it, the real issue and the main issue here is a question of the appropriateness or inappropriateness of its claim as a unit.

Mr. Nelson: It bears on that also.

Trial Examiner Jaffee: How?

Mr. Nelson: It bears on that illustrated by an experience with a chapter not limited to the plant and a chapter not limited to supervision.

Mr. Donovan: The evidence does not show that it
701 was not limited to supervision, does it?

Mr. Nelson: Well, the CIO, the Local was limited to supervision but the conflict between the interests of supervision and the hourly rated employees, appears very clearly in the testimony. It was summarily disbanded as a necessary measure in settling what appears here as a serious strike.

Trial Examiner Jaffee: To use an illustration, are you referring to the testimony of the last witness where he spoke of the intervention of Mr. Lewis and what the witness referred to as "the foremen having been left out in the cold", so to speak.

Mr. Nelson: He says that certain foremen members of this Local were seeking reinstatement after that strike at Dodge and Chrysler and that Mr. Lewis left them out in the settlements and went to extreme measures of even disbanding rather than to jeopardize a settlement of the rights and claims of the maintenance and production workers.

Trial Examiner Jaffee: I gather then this, in that settlement there was in effect a conflict as to whether or not production and maintenance workers would benefit as opposed to foremen.

Mr. Nelson: There was either a conflict or a trade. One thing was given for something else and that would, of itself, imply some conflict—

702 Trial Examiner Jaffee: (Interposing) And that in turn would indicate that production and maintenance workers should not be in the same unit as foremen?

Mr. Nelson: That is our position. This is an illuminating example of exactly what happens.

Trial Examiner Jaffee: When I say it might indicate, I am talking about your contentions.

Mr. Nelson: Those are our contentions. We claim this illustrates our contentions by experiences and is presumed to be within the knowledge, at least, of the active members of the Packard Motor Car Company. In any event, those are our contentions.

Mr. Dahling: If that is the case, then testimony that John L. Lewis changed his Mine Workers Constitution after the Collier case to admit supervisory employees is also pertinent testimony in this case and has about the same weight. Of course, it is a fact, as it appears in the Congressional Record, that as soon as the Collier case came into effect, Mr. John L. Lewis changed his Constitution to take in supervisory employees of the mines.

Mr. Nelson: When I was in the coal mines we took in all the bosses.

Mr. Dahling: I refer you to the Congressional Record, that I assume you are familiar with. You were present at the hearing and heard testimony to that effect.

703 Mr. Nelson: I do not need the Congressional Record on the Mine Workers Union. I was a member of it.

Mr. Dahling: Then you are not up to date on that?

Mr. Nelson: Oh, yes, I am.

Mr. Karasick: You are not ruling on this particular question?

Trial Examiner Jaffee: No.

Mr. Karasick: It is just an observation?

Trial Examiner Jaffee: It is a request for enlightenment.

Mr. Karasick: Very well.

Trial Examiner Jaffee: Perhaps I should say further enlightenment.

Mr. Nelson: May I proceed?

Trial Examiner Jaffee: Yes.

Mr. Nelson: I call Mr. W. T. Grant.

WILFRED T. GRANT,

a witness being called by and on behalf of the Petitioner, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Nelson) Your first name, please?

A. Wilfred.

Q. Mr. Grant, your residence, if you please?

A. 15080 Strathmoor, Detroit.

704 Q. And your present occupation?

A. President of Local 600 UAW-CIO.

Q. Did you come here at my request?

A. That is true, if you are Mr. Nelson.

Q. I am Walter M. Nelson. You have never met me and I have never met you?

A. That is right.

Q. And Mr. Nelson called you and you came?

Mr. Donovan: What was the name of the Local?

The Witness: Local 600, UAW-CIO.

Q. (By Mr. Nelson) The Ford Motor Company Local of Maintenance and Production workers?

A. Yes, that is the Local that represents the maintenance and production workers at the Rouge Plant, Ford Motor Company.

Q. Were you employed by the Ford Motor Company prior to becoming president of the Local?

A. I was.

Q. In what capacity?

A. Tool and die room.

Q. For how many years were you employed by the Ford Motor Company?

A. Well, I started with the Ford Motor Company in 1922.

Q. And continued until when?

A. Until I became financial secretary of Local 600.

705 Q. When was that?

A. That was in 1942.

Q. And since that time you have been active in the affairs of Local 600, have you not?

A. That is true.

Q. Now, without assuming any detailed knowledge of it, Mr. Grant, do you know of the efforts of the supervisory employees of Ford Motor Company to organize an association?

A. Yes.

Q. Beginning sometime in 1941?

A. I do not know when it began.

Q. You knew it was in process?

A. We had manifestations of it at the Rouge Plant, yes.

Q. And you have knowledge, do you, that after various proceedings and negotiations a contract was signed between the Ford Motor Company and the Foreman's Association of America, Ford Chapter Number 1?

A. I have knowledge of that, yes.

Mr. Dahling: Mr. Examiner, I want to repeat again to be sure that we have a continuing objection to all this testimony that relates to any of the testimony relating to the Ford organization or any union in the Ford organization or associations in the Ford organization, my objection being that it is incompetent, irrelevant and immaterial. We are dealing here with the Packard situation.

706 Trial Examiner Jaffee: In order to remove any possible question and doubt as to whether or not your rights have been protected, Mr. Dahling, I will say for the record I have regarded and do regard that the matter you have mentioned has been riveted and bolted and I do not know what else—you have it in so tight that the nails are coming out the other end of the plank.

Mr. Dahling: Thank you, sir.

Mr. Nelson: It is even welded.

Q. (By Mr. Nelson) Now, Mr. Grant, my question is this, as an active officer of Local 600, have you observed any harmful effects on the rights of maintenance and production workers or on their protection that could be said to grow out of the organization by the supervisory force at the Ford Plant?

A. No. I have not noticed any harmful effects, neither can I say I noticed any beneficial effects. We have had grievances before and we have grievances now.

Q. And the organization of the foremen does not affect in any way your handling of those grievances?

A. No, none whatsoever.

Q. Neither to hurt nor to help?

A. That is correct.

Q. What can you say as to whether the organization of the foremen has affected the growth or numbers of

707 your Local or organization in the Ford plant?

A. Well, that has not hurt any because we have to have at the Rouge Plant—what I presume a lot of people do not like—a closed shop. So, every man that is on those jobs, that is covered by the contract, is covered by the Union.

Q. So your answer is that it has not helped or hurt in that regard, is that correct?

A. That is right.

Q. Now, if you did not have a closed shop, but suppose you had recognition, have you observed anything that would tend to hurt or help your organization? I am asking you to assume that it was not a closed shop. Would the organization of the foremen have affected their rights or their grievances or the operation of your organization in any way?

Mr. Donovan: That is pure speculation.

Mr. Nelson: In your opinion, Witness?

Trial Examiner Jaffee: Just a minute.

Mr. Donovan: It is a hypothetical question, and pure speculation.

Trial Examiner Jaffee: I think that further foundation ought to be indicated on the record first, to show that the witness is capable of answering the question.

Q. (By Mr. Nelson) Mr. Grant, do you feel that you could express an opinion on the subject?

708 A. I could because it so happens that the Ford Motor Company—even though I had been employed there for 22 years—is not the only place I worked. I worked in other places both in America and in England where there have been unions and I have been able to observe from experience.

Q. The effect of the organization of supervisors?

A. That is right.

Mr. Donovan: Well, then—

Mr. Nelson: (Interposing) May I ask just one question?

Mr. Donovan: All right.

Q. (By Mr. Nelson) Then you are willing to give your opinion? And your opinion as expressed here should stand?

A. I think so.

Mr. Donovan: This question, if answered, would obviously not be binding upon Management because the witness does not purport to give Management's views, whatever they may be and whether he may or may not be in a position to speak about Management's view, which I doubt he is. I do not think that the witness should be allowed to speculate upon a state of facts upon which he never had any actual basis in his experience at the Ford Motor Company; because they have from the first, as I believe, had a closed shop contract. What the conditions would have been if they did not have that type of contract I think both Mr. Grant and myself or any other
709 person could only let their mind roam around and speculate about. Mr. Nelson expects that that speculation might result in something on the record giving an unfavorable inference to the Employer. It is a danger that I would like to avoid and is one of the reasons I object to the question.

Mr. Nelson: The witness has now stated his experience and reason for his opinion and has stated his opinion for whatever weight it may bear. I think it should remain.

Mr. Donovan: If the Examiner feels that in making a complete record, he would like to hear the testimony, and give it such weight as he considers proper, I will withdraw the objection.

Trial Examiner Jaffee: I do not like testimony that is speculative. The difficulty is that you cannot define that term in the language of mathematics. Where speculation ends and fact begins is often questionable. Very often, if a person is sufficiently qualified to be what we might term an expert and answers to a hypothetical question, it is of some value. The fact that it is hypothetical and the fact that it may be said to a certain degree to be speculative, of course, affects the weight. I am inclined to think, on

the whole, it should be received; but frankly, I am not too clear on it, as I have indicated. The matter of
710 weight enters into the picture.

Mr. Karasick: Mr. Examiner, may I make this suggestion? If that is so, that the witness' qualifications with respect to his length of employment and place of employment and general experience with the Union picture be gone into with a little more detail to show whether or not or what weight should be accorded to it, if any.

Trial Examiner Jaffee: Proceed.

Q. (By Mr. Nelson) Mr. Grant, have you been a member of other labor organizations than the UAW?

A. Yes.

Q. What other ones?

A. The A. S. E. That is an English trade name. It is the Amalgamated Society of Engineers and later on, it was the Amalgamated Engineering Union.

Trial Examiner Jaffee: That is in England?

The Witness: That was in England. I was also a member of that when I came out to America for a matter of ten years in the Canadian branch, the Canadian and American branch I should say, because at that time I worked in what was a notoriously open city but I still retained my affiliations with the Union. I believe if you care to see that, that I have documentary proof here.

Q. (By Mr. Nelson) Your statement will suffice for the time being. Any other labor organizations that you
711 can remember?

A. The UAW-CIO and the Engineers, that is all.

Q. Covering a period of how many years?

A. I first joined the Union in—let me see—it is a long way back, 1916 or 1917.

Q. Have you been a member of some labor organization practically ever since that time?

A. Practically, yes.

Trial Examiner Jaffee: By the way, how old were you when you first joined the Union?

The Witness: Well, I will have to go back now.

Trial Examiner Jaffee: Approximately?

The Witness: Around '16 or '17. I joined as an apprentice. The A. E. U. is a trade union of skilled workers and

you joined as an apprentice member and then you became a full member when you became a journeyman.

Trial Examiner Jaffee: That takes a period of training?

The Witness: That is right.

Q. (By Mr. Nelson) Under union auspices or supervision?

A. Well, in some cases, under supervision and in some cases under both.

Q. Were you an officer of the Engineers Union?

A. No.

Q. But a member?

712 A. I was a member.

Q. Were you active?

A. Yes, I was active. I was a member of the Trades and Labor Council as a delegate from the Union. That was in England.

Q. Have you been active since the inception of the organization, the UAW in the Ford Plant?

A. Yes.

Q. Its approximate inception?

A. Yes.

Q. I want to come back. I have asked you about the organization of foremen and I want to ask you if your answers would be in any way changed as to the effect on the grievances, rights or procedures of the maintenance and production workers and their organization,—if the answers would be the same with respect to the contract that the Foreman's Association has: In other words, has the fact of making a contract in any wise affected the rights and prospects of the Maintenance and Production workers?

Mr. Donovan: Just a minute, please.

Mr. Nelson: I mean the foremen's contract, that is what I referred to.

Trial Examiner Jaffee: At Ford Motor Company.

Mr. Nelson: At the Ford Motor Company.

The Witness: I can only answer—

713 Mr. Donovan: (Interposing) Just a minute. I submit that this question is so put that it is asking possibly one of the issues in the case. It is a broad question involving a conclusion and covering an unlimited

amount of territory and ground. I think on so important a matter and one that might loom as such; that counsel should ask more specific questions and break the questions down so that the witness may give factual knowledge of facts that bear upon such a statement, which is a general conclusion.

Mr. Nelson: I assume—

Mr. Donovan: (Interposing) The word "affected" might mean so many different things—

Mr. Nelson: (Interposing) Very well, I will withdraw the question and ask it over.

Mr. Donovan: It is a question of law and fact mixed together. We do not want that sort of thing piled against the Employer in the record.

Q. (By Mr. Nelson) Has the making of a contract by the Foreman's Association in any wise harmed or helped the maintenance workers at the Ford Plant?

A. As I stated before, it hasn't harmed the production workers; neither has it helped them. We had grievances, as I stated before, and the Foreman's Association was formed and we have grievances now.

Q. Do you handle them in much the same way?

714 A. Pretty well the same way.

Q. Now, taking a little narrower question, Mr. Grant, so far, has there been any friction or difficulty growing out of the question whether a man should be a UAW member or a member of the Foreman's Association?

A. No, we have none, and there has been no dispute on that. The UAW, of course, has had some dispute as to who should be members of the Union or who should be considered as excluded, but that is apart from the foremen.

Q. But there has been no dispute growing out of the organization of the foremen?

A. No, none whatsoever.

Q. Let us assume that there could be such a thing. Is there anything in the nature of it, Mr. Grant, that would not yield to ordinary negotiations?

Mr. Donovan: I object to a question like that.

Trial Examiner Jaffee: Objection sustained.

Mr. Nelson: You may cross-examine.

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Mr. Donovan: May I ask the witness a couple of questions?

Trial Examiner Jaffee: Go ahead.

Cross-Examination.

715 Q. (By Mr. Donovan) Mr. Grant, the Union of which you are president is a union of the production and maintenance workers at the Rouge Plant of the Ford Motor Company, is that correct?

A. That's correct.

Q. And your members have frequent and daily contact with foremen, do they not?

A. That is correct.

Q. Would you give us your statement or opinion on whether or not, in your opinion, if foremen were organized into a regular national union, such as the Foreman's Association of America, that the CIO would feel that they could handle them better than if they were not so unionized in their contacts?

A. I would like you to repeat that question again, please.

Trial Examiner Jaffee: Will you read the question, please?

(Question read.)

Mr. Nelson: I will object to that form of a question.

The Witness: I would like to answer it.

Trial Examiner Jaffee: Just a minute.

Mr. Nelson: I am going to try to keep you from answering that question. I am appealing to the Examiner to exclude the question.

716 Trial Examiner Jaffee: I think the words "handle them" should be defined first.

Mr. Nelson: I will object to it even then.

Trial Examiner Jaffee: We will cross such bridge when we come to it.

Mr. Nelson: I don't think he can define it.

Q. (By Mr. Donovan) Mr. Grant, your members are

concerned almost daily, are they not, with certain matters concerning production and maintenance people?

A. Yes, sir.

Q. And that requires dealing, does it not, with the officers of the CIO and their representatives?

A. Yes, sir.

Q. And sometimes the foremen do things that are not liked by the CIO?

A. Naturally, and sometimes the men do things that do not please the Management.

Q. Now, I am only going to ask you this in a very general way. Do you feel in such a case if the foremen were organized into a regular national union, such as the Foreman's Association of America, being so unionized and being union men themselves, would you feel you could make a little more progress in the CIO in your contacts with the foremen on your various disputes that arise between them?

Trial Examiner Jaffee: Than otherwise?

717 Mr. Donovan: Than otherwise.

Mr. Nelson: I think that is still objectionable.

Trial Examiner Jaffee: Why?

Mr. Nelson: It calls for an opinion of this witness.

Trial Examiner Jaffee: I thought Mr. Donovan was asking for his opinion.

Mr. Nelson: But it is his weighing of an advantage that is supposed to exist, if the Examiner please, and I do not see where any interest is involved here.

Trial Examiner Jaffee: He was an expert witness before, and you cannot now claim he is not.

He may answer.

The Witness: May I answer it in my own way?

Trial Examiner Jaffee: I certainly do not want you to answer it in any other way.

The Witness: I would answer that by saying I don't think it would have any more effect than the organization of manufacturers has.

Q. (By Mr. Donovan) You do not feel, Mr. Grant, then, that there would not be a certain amount of cooperation growing out of one union dealing with another union in a situation such as I have described?

A. I haven't noticed—

Trial Examiner Jaffee: (Interposing) Just a minute. Of course, you are assuming something the witness has
718 not testified to.

Mr. Donovan: His answer was he did not think there is anything to Union cooperation or Union sympathy in the question put to him.

Trial Examiner Jaffee: The first question was about the Union dealing with the foremen and you are now talking about one union dealing with another union.

Mr. Donovan: You overruled that question?

Trial Examiner Jaffee: Yes.

The Witness: I would like to answer it.

Trial Examiner Jaffee: The question has been overruled.

Q. (By Mr. Donovan) Would the members of your union run a picket line of the Foreman's Association of America during a strike of theirs at Ford's?

A. During wartime, yes.

Q. In peacetime?

A. I don't know.

Q. State, if you know, whether or not, if you had a strike and a picket line, regardless of whether it was war or peacetime, would you or would you not approve of the FAA members running your picket line?

Trial Examiner Jaffee: You mean, from the standpoint of the UAW?

Mr. Donovan: Yes, would he like it or not?

719 Mr. Nelson: I think the only thing you could ask is what would he do.

Q. (By Mr. Donovan) Well, would you permit it?

A. We probably wouldn't like it and—we probably wouldn't let them. We didn't when we shut the plant down in 1941.

Q. Sure, you would not let them?

A. No.

Redirect Examination.

Q. (By Mr. Nelson) It would make no difference whether they were organized wholly, partly organized or not organized?

A. No, when we shut a plant down, we shut it down.

Q. There might be circumstances where you would permit the foremen to go through?

A. We did in April, 1941, when we shut the plant down. We recognized the necessity of certain vital things being carried on, and we permitted both the workers and supervision to go in the plant to see that no harm was brought to the plant, other than stopping production.

Trial Examiner Jaffee: Any further questions of this witness?

Mr. Karasick: I have some questions.

Recross-Examination.

Q. (By Mr. Karasick) Mr. Witness, I believe you said your organization had grievances to handle before
720 the contract entered into between the Foreman's Association of America and the Ford Motor Company, and has had grievances since, is that correct?

A. That is correct.

Q. Has there been any greater difficulty in handling grievances since the Foreman's Association contract at the Ford plant, or has there been no material change?

A. There has been a change, yes.

Q. What sort of a change?

A. But that was not due to the formation of the Foreman's Union.

Q. No, you have already given testimony as to your opinion as to whether or not there has been any difference in the situation because the foremen have organized and gotten a contract at Ford's.

A. You asked me the question, has there been any differences in the grievance procedure, and I said yes, there has been.

Q. By difference, I meant, has there been any difficulty caused in the handling of grievances that could be attributable to the contract between the Ford Motor Company and the Foreman's Association of America?

Mr. Dahling: Well, if this witness knows.

Mr. Karasick: I certainly do not want him to tell me if he does not know.

721 A. No.

Q. (By Mr. Karasick) You are acquainted with handling grievances there and that is part of your duties?

A. Naturally.

Q. The ASE is a labor organization which comprises supervisory employees in England, is that right?

A. Will you read the question?

Trial Examiner Jaffee: Will you please read the question?

(Question read.)

A. If a man of the ASE—he could still retain his membership in the ASE. He could not be an active member.

Q. (By Mr. Karasick) Do you know whether or not there are any unions in England which cover supervisory employees only?

A. (No response.)

Q. Are you acquainted with the present English picture in that regard?

A. Not too well acquainted, no. I know there was, as I said, when I was in England, which was quite a few years back. If you ask me the name of it, I couldn't tell you.

Q. I do not understand what you are talking about now.

A. An organization of supervisors.

Q. Do you know whether one still exists today?

A. I couldn't say.

722 Q. In other words, you do not know what the British experience has been in that regard?

A. Only what I knew prior to coming out here.

Q. I see.

Mr. Karasick: Very well, I have no further questions.

Mr. Nelson: Will you mark these Petitioner's Exhibits Numbers 31 and 32?

(The documents referred to were marked for identification as Petitioner's Exhibits Nos. 31 and 32.)

Redirect Examination.

Q. (By Mr. Nelson) I am showing you Petitioner's Exhibits 31 and 32, Mr. Grant—

Mr. Donovan: (Interposing) Pardon me, would you sus-

pend for just a moment, Mr. Nelson? Mr. Dahling and I are conferring regarding cross examination.

Mr. Nelson: Oh, I am sorry. I did not mean to trespass.

Mr. Donovan: All right, Mr. Nelson, you may go ahead.

Q. (By Mr. Nelson) Mr. Grant, I am showing you Exhibit 31 and Exhibit 32, which are bound pamphlets, and ask if you recognize them as the publications of the supervisory organization in England you referred to, saying, in effect, I think, that you could not recall the name of it?

A. I couldn't, but I am quite sure—I am not quite sure this was the name, I knew of the existence of it, and
723 this may be the name of it, I believe it is.

Q. Of the supervisory organization in England?

A. That's right, but I still couldn't be sure this was the particular one.

Q. This is A. S. S. E. T., as you will notice.

A. Yes, but when I was in England I knew about it and the only thing I could assume now is that they are still in existence.

Q. Whether these are their publications, you would not know, only that they appear to be?

A. That is right.

Mr. Nelson: I offer them in evidence as bearing on the experience in England in the same matters, supervisory organization.

Mr. Dahling: Of course, Mr. Examiner, the testimony is purely hearsay.

Trial Examiner Jaffee: Well, the short answer is that I see a pamphlet, or a couple of pamphlets in Mr. Donovan's hand; it consists of several pieces of paper on which there appears to be some printing. In other words, they have not been qualified, obviously. That is all we can say about it.

Mr. Donovan: I would be unable to register, other than a general objection, an objection to the receipt of evidence of this kind without examining the documents.
724 One of them is rather a lengthy one. The other contains a balance sheet, in very fine printing, and having 34 pages. It is headed, "Supervisory staffs and

engineering technicians, 25th annual report." It is a balance sheet for a calendar year. And the other is entitled, whatever it may be inside, "Rates of pay of railway supervisory staff."

How much relevancy they might have on examination to the mass production industry in the metropolitan area of Detroit, I would be unable to say without examining it. I would, likewise, be unable to say what relevancy, in particular, the other exhibit marked for identification, 32, would have, as it purports to cover engineering technicians, and whether it would have any application to our present situation of the consideration of the appropriateness of a collective bargaining unit of foremen in Packard's Plant, I would not know. But I do think, in the main, Mr. Trial Examiner, as a matter of fairness, that either of Petitioner's exhibits marked for identification numbers 31 and 32, may obviously contain general statements which might give rise to unfavorable inferences to the Employer involved here that I would be unable to measure without an examination of the pamphlets for some time. I think counsel has established through the witness' testimony that there was some sort of an organization that had to do with some kind of supervision
725 in England. If he wants to go further than that, I would certainly want, if the Examiner allows these pamphlets in evidence, then to go through each one and reserve our right to make any additional, appropriate objection.

Mr. Nelson: If my brother will undertake to diligently use his spare time, I will certainly lend him the pamphlets. I am sure they would be very informative.

I will not press the admission now, if he wants to examine them, but I do offer them.

Trial Examiner Jaffee: I must decline to accept them on the present state of the record. You may reoffer them later.

I point out to you that at the very least, you lack the basic testimony that these documents are genuine.

Mr. Nelson: I do not believe that is the issue raised. My brother is fair enough to admit that on their face, they

impute genuineness, as being publications of the Association that they purport to be published by.

Trial Examiner Jaffee: I do not think he went quite that far.

Mr. Nelson: But he raises the issue of their relevancy and I obviously am unable to produce authenticating testimony as to the documents themselves. That is not in our power under war conditions.

Mr. Karasick: These documents refer, apparently, to
726 some of the supervisory experiences in that country.

It was a type of inquiry that I made of this witness, because I thought the Board would want to have information of that type.

Trial Examiner Jaffee: I understand, but I cannot take a pamphlet just because it purports to be genuine. I have already ruled I am not going to take them on the present state of the record.

Mr. Nelson: I have offered the witness for cross examination.

Mr. Donovan: We have no further questions.

Mr. Nelson: Then this witness will be excused?

Trial Examiner Jaffee: That is right, the witness is excused.

(Witness excused.)

Mr. Nelson: May we have the noon recess at this time?

Trial Examiner Jaffee: No, let us go on for awhile. We have some time to make up.

ROBERT F. TURNBULL,

a witness called by and on behalf of the Petitioning Union, being duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Nelson) What is your full name?

A. Robert F. Turnbull.

727 Q. What is your address?

A. 21209 Sunset Avenue, VanDyke, Michigan.

Q. Were you born in this country?

A. I was born in London, England.

Q. Did you go to work over there, work in shops?

A. Yes.

Q. How early did you go to work?

A. At the age of fourteen and one-half years.

Q. In what kind of work?

A. I was apprentice to a watchmaker.

Q. And following that apprenticeship, first, how far and how long did you follow that apprenticeship?

A. I followed that for 18 months, then I ran away from it.

Q. So you did not finish that apprenticeship?

A. No.

Q. What did you do next?

A. I went to scientific instrument making.

Q. In a factory?

A. In a factory.

Q. In London?

A. In London.

Q. How long did you follow that?

A. Up until the age of 19.

Q. Did you enter an apprenticeship there?

A. Pardon me. Nineteen and one-half. I was with
728 that company. Then I left there and went to another firm as a journeyman.

Q. Had you completed your apprenticeship?

A. Yes.

Q. You were a journeyman what?

A. Journeyman scientific instrument maker.

Mr. Donovan: I did not get that.

The Witness: Journeyman scientific instrument maker.

Q. (By Mr. Nelson) At what age?

A. At the age of nineteen years and six months. That was five years I have had in delicate work of that kind.

Q. And from then on you worked as a journeyman?

A. Yes.

Q. Instrument maker?

A. Yes.

Q. For how many years?

A. I stayed for two and a half years making range

finders, and from that I went to tool and gauge work on aircraft parts during the last war.

Q. For whom were you working in making these aircraft parts?

A. William Beardmore and Company, in Clydebank, Scotland.

Q. How long did you follow that work?

A. Up until 1922.

Q. Then what did you do?

729 A. I joined into the police force as a mechanic and I was a mechanic with the police force for six and a half years.

Q. Which police force?

A. The Royal Ulster Constabulary in Belfast.

Q. What were your duties there, what mechanical work did you do there?

A. Well, we had cars, both types of police cars for the whole of the north of Ireland and we had about forty mechanics there. Out of that forty, six of us were what we called first-class mechanics and the rest were second-class mechanics. I happened to pass the test as a first-class mechanic and I had to work on the building and repairing of automobiles in all phases of the mechanics and—not the body parts so much,—but engines, transmissions, differentials, rear ends, anything in that line of repair work from tearing the job down to rebuilding the job completely.

Q. You say you worked six years at that?

A. Six and a half years, about.

Q. And what did you next do?

A. I came to Canada from the City of Belfast.

Q. In what year?

A. 1926.

Q. And the month?

730 A. February.

Q. Did you stay in Canada?

A. Yes.

Q. For how long?

A. Roughly, two and a half years.

Q. Then what did you do?

Testimony of Robert F. Turnbull

A. I worked for the Ford Motor Company, in the transmission department as a machinist.

Q. And at the end of that two and a half years, what did you do?

A. I came over to the United States.

Q. In what year and what month?

A. November, 1928.

Q. What did you do when you arrived here?

A. Well, I went through, first to New York, and I worked at the American Machine Company in New York for about four or five months.

Q. That is New York City, I presume?

A. Yes.

Q. Doing what?

A. I was a milling hand. I was running a milling machine there and making parts, I think, if I remember right, they were cigarette machines and we made the parts.

Q. After those few months in New York, what did you do?

A. I came back to Detroit.

731 Q. That would bring you back to Detroit in what month and yea , if you can recall?

A. Around about February, 1925.

Q. Did you secure employment here?

A. Yes.

Q. Where?

A. I went to the Hudson Motor Car Company.

Q. How long did you work for the Hudson Company?

A. Until the Fall in that year, I think around September, 1929.

Q. In the mechanical line?

A. Yes.

Q. Where did you go then?

A. To the Packard Motor Company.

Q. In what month and what year?

A. As near as I can remember, it was around September, 1929.

Q. That was your first employment by Packard?

A. Yes.

Q. In what line did you hire out to Packard?

A. As a lathe operator on a P. and J. operator, to be exact; that's a semi-automatic lathe.

Q. And making what part?

A. If I remember right, they were hubs for the rear wheels.

732 Q. Did you stay at Packard's for some time?

A. Not very long. I got laid off.

Q. Where did you go from there?

A. Well, I didn't work for quite awhile. I just had to do what I could for a living, it was difficult because I didn't have citizenship papers and it was difficult to get a job and I didn't feel justified in going around when I wasn't a citizen and getting a job in the factories, so I just had to get along until 1935 when I was made a citizen.

Q. Now, did you go back to Packard from time to time?

A. No, I went back to Hudson's, though, two or three times and got some work and I got some work at the Federal Screw and worked there on automatic machines for awhile.

Q. That is mechanical work?

A. Yes.

Q. Did you finally come back to Packard?

A. Yes.

Q. In what month and year?

A. It was around December, 1934 or January, 1935, just around that time.

Q. What line of work?

A. I came back exactly as I had been before, as a P. and J. operator.

Q. That is a machine?

733 A. Potter and Johnson machine.

Q. Have you been there ever since?

A. Yes.

Q. Approximately since January, 1935?

A. Yes, I have ten years seniority, as far as seniority is concerned, with the plant now.

Q. Did you follow that line of work on the P. and J. machine for some time at Packard's?

A. Yes.

Q. For how long?

A. Oh, about, I suppose, about nine months.

Q. Then what did you do?

A. Then I changed to a different named machine, but practically the same type.

Q. And following that, how long?

A. Oh, way through to, let me see, around until about 1939.

Q. A period of approximately four years on that machine?

A. Yes.

Q. And in 1939, what change, if any, took place?

A. Then I got a job on the repair squad tearing down and rebuilding transmissions that had been out in the field.

Q. And were brought back into the factory?

A. Yes.

Q. How long did you follow that work?

734 A. Until May, 1940, about, oh, I suppose a year or so.

Q. What took place then?

A. Then I got transferred to the aircraft division.

Q. What part of the aircraft work?

A. To the engine assembly department.

Q. And you were still an hourly rated production worker?

A. Yes.

Q. How long did you follow that?

A. Well—

Q. (Interposing) This is on Packard's work, of course?

A. Yes. I started there with the first engine, practically, and then we transferred from the small department to the big department, F. F., and I went over to that department and worked on what was known as the super charger and the wheel case jobs and gear case, and at that time there were only a few men there. Of course, we were just getting ready for the production job, and as the men came in, what little I knew, I showed them and we trained them and I became a leader. Later on—

Q. (Interposing) When did you become a leader?

A. Somewhere—I'm not quite sure when I became a leader, Mr. Nelson, it was somewhere about July, 1941.

Q. All right, and that is engine assembly, is that right?

A. Yes, engine assembly.

Q. How long did you continue as a leader?

735 A. Oh, about a year.

Q. Then what took place?

A. Then I became an assistant foreman.

Q. In the same department or division?

A. Yes.

Q. Can you give us the month and year when you became an assistant foreman, approximately?

A. May, 1942.

Q. Have you continued as a foreman of some rank at the Packard Plant ever since?

A. Yes.

Q. How many men did you have under you to start with?

A. When I first took an assistant foreman's job I had, oh, I suppose about 40 men. I had two different assembly lines to look out for. One was the cam shop assembly and the other was the super charger.

Q. That is still engine assembly?

A. Yes.

Q. How long did you continue as an assistant foreman?

A. For about nine months.

Q. And until what time?

A. Until March, 1943.

Q. Then what?

A. Then I was promoted to a foreman.

Q. In the same line, same assembly?

736 A. Yes.

Q. How many men have you under you—how many men had you under you then?

A. About 200, I suppose.

Q. And how many assistant foremen?

A. Just one assistant foreman at that time.

Q. Has that number increased since that time?

A. I got another promotion after that.

Q. Oh, into what?

A. In March, 1944, I was promoted to general foreman.

Q. How many departments do you have supervision of as general foreman?

A. I have one large department called F. F. A., and one small department. There is 32 men in that department.

Q. In the large one, how many men?

A. Somewhere in the neighborhood of 335 people. It was as high as 575 until a wee while ago.

Q. You have had as many as 575 men under your supervision?

A. Yes.

Q. What is the small department?

A. The small department makes up all the lines and spray paints the connections on the end and one or two other small parts that are added to the engine.

Q. Are all of the 575 people in the larger department, in the engine assembly?

737 A. Yes.

Q. That is still your work?

A. Yes.

Q. How long have you been a general foreman?

A. Since March, of this year, the 18th of March, 1944.

Q. You are acting in that capacity when you are in the factory at the present time?

A. Yes.

Q. When you were a production worker, were you a member of any labor organization?

A. Yes.

Q. What?

A. Do you want it from the start?

Q. Yes, go right back and tell us what unions you have been a member of.

A. A member of the scientific instrument makers union —that's Scientific Union Maker's Society.

Mr. Karasick: Just a moment, Mr. Examiner, I would like to object at this time to going into the details as to the unions this man has belonged to since he was first employed. If Mr. Nelson wants to know what unions he has been a member of since he went to Packard's, that is all right.

Mr. Donovan: Well, I think counsel is entitled to go into the witness' background.

738 Trial Examiner Jaffee: He can probably give one or two names a lot faster than we can listen to objections. There are other things I am rather concerned about, but this does not happen to be one of them.

Mr. Karasick: Very well, I have made my objection; it was overruled.

Trial Examiner Jaffee: Go ahead.

The Witness: As I said, I was a member of the Scientific Instrument Maker's Society. Later they amalgamated with the Amalgamated Engineering Union.

Mr. Donovan: Can you give us the approximate dates?

The Witness: That would be somewhere, as near as I can remember, around 1917, when that amalgamation took place and it became the Amalgamated Engineering Union, and they took over various branches of that line of work.

Q. (By Mr. Nelson) Will you tell us whether that union of workers included their supervision?

A. I don't remember an awful lot about it. My father went on supervision and I know he has a pension from that same union at the present date. They had kind of an annuity attached to it and when they leave and get on supervision they carry on their annuity.

Q. But whether he was a member, you do not know?

A. Oh, yes, he has an annuity from it at present.

Q. As a supervisor, he remained a member of it as a

739 worker?

A. Yes.

Q. That is an English experience?

A. Yes.

Q. All right, go ahead.

A. When I was in Hudson's and the UAW first formed, I joined that back in around 1929, I think that would be, that was before it became the UAW-CIO. I think that was the UAW-AFL in those days.

Mr. Donovan: You say in 1929?

Mr. Nelson: That is right, it was the UAW-AFL.

Q. (By Mr. Nelson): Go ahead, Mr. Turnbull.

A. Then when I came to Packard's and the organization started for the UAW, I joined that and I remained a member of that until I requested, or was given a withdrawal card upon becoming an assistant foreman.

Q. Are you presently a member of the Foreman's Association?

A. Oh, yes, I am secretary-treasurer of Packard Chapter Number 5, and a National Board Member of the Executive Board as well.

Q. And you became a member of the Foreman's Association when?

A. In 1942, October.

Q. And you have continued to be a member ever since?

A. Yes.

740. Q. Were you one of the early members?

A. Yes, I was not at the first meeting, but I was at the second and I joined before I was at the second meeting.

Q. And you have continued as a member ever since?

A. Oh, yes.

Q. Mr. Turnbull, at the Packard Plant as a foreman of any rank that you have had experience with, do you have the power to hire a workman under you?

A. No.

Q. At any time since you have been there?

A. No.

Q. Do you have the power to fire one?

A. No.

Q. Do you have the power to make a recommendation as to the hiring or firing?

A. No.

Q. You do not?

A. Oh, I misunderstood you. Yes, I do.

Q. All right, and to whom do you make that?

A. Well, on the hiring, not any special individual. It would be a case if more help was needed, then I would write a requisition and hand it to the superintendent, of course, and discuss it with him beforehand as to the advisability of it. I would put in a requisition and sign it and the superintendent would also sign it and then we
741 would leave it for the division manager to sign as well.

Q. And who would determine whether you would hire the employee specified?

A. A certain person, you mean?

Q. No, not any certain person, but a certain person to do a certain job?

A. Yes, well, the superintendent, I would have to have him okay it before I would write the requisition.

Q. Is that true also of hiring or discharging?

A. Yes.

Q. Now, about the matter of discipline, do you have any authority in the matter of discipline over the men under you, speaking of production workers?

A. Well, yes, I have a certain amount of authority.

Q. How far does it extend?

A. I can settle a grievance if it is just an ordinary small grievance. Many come up that we are able to settle very easily. But if it becomes of any size, it goes to Labor Relations.

Trial Examiner Jaffee: Before we recess, I want to say that yesterday when Mr. Traen was on the stand, near the close of his testimony, I asked him two or three questions. I wanted to preface my questions with a few remarks.

On page 572 of the record there appears this ques-
742 tion asked by Mr. Dahling:

"Q. Which is the greater, Mr. Traen, your loyalty to the Union or the Company?"

Mr. Nelson objected to the question and the objection was sustained. I intended to say yesterday, and I say now, that ruling was based on two grounds, the less important of the two being the fact that the question assumes a fact which the witness had not previously adopted. More important of the two, however, is the fact that the question is so broad in and of itself, that I do not see how any fact finder could treat any question or, rather, any answer given thereto other than in a vacuum. That was the basis for the ruling when the ruling was made.

If my present observation suggests to counsel any questions that they wish to ask Mr. Traen, Mr. Traen can be recalled for that purpose. I assume that Mr. Traen will be here at the opening of the afternoon session, is that right?

Mr. Nelson: We will see that he is, Mr. Examiner.

Trial Examiner Jaffee: Very well, we will recess at this time until two o'clock this afternoon.

(Whereupon, at 1:00 o'clock p. m., the hearing in the above entitled matter was recessed until 2:00 o'clock P. M.)

743 After Recess.

(Whereupon the hearing was resumed, pursuant to the recess, at 2 o'clock p. m.)

Trial Examiner Jaffee: Gentlemen, are we ready to proceed?

Mr. Donovan: Mr. Dahling was delayed a little but he requested that we not delay the hearing.

Trial Examiner Jaffee: Before we start with further questioning, however, I should like to make one or two preliminary observations.

I think I indicated at pages 462-3 of the record that I had some concern at the pace with which this hearing was moving. We have obviously going rather slowly. I suggested that the place in the records I have referred to one possible method of shortening the hearing, mainly stipulations as to facts, particularly facts concerning which I anticipate there probably is not much dispute. I want to supplement that by suggesting further possibilities. I am sure there have been received in evidence certain matters concerning which the Board could well have taken official notice. The principle of official notice, like the principle of judicial notice, in the law, is one I have always felt could be used more than it is used. I think you gentlemen may safely assume that the Board is possessed of a reasonable amount of intelligence and once you have indicated

744 that the figures to be added are two and two you need not go further and put in evidence that the answer is four. We can do that just as well and do it without the necessity of having some witness spell it out. I suggest further that you bear in mind, at least in some instances that it probably is just as well to leave certain matters to develop either in oral argument or in briefs. There is one principle that is applicable in these hearings which is also applicable at law and it is this: Certain matters may be relevant and are, of course, relevancy is the main point. But, we also have to bear in mind that there

is a limit to the length of human life and there is an area wherein courts have said that although evidence is relevant, the degree of that relevancy—if a particular situation may be such that when the amount of time is necessary to receive it is considered—it just is not worth spending that time.

Now, if you gentlemen will apply the things I have said if, in other words, you stipulate to such extent as you can stipulate, if you will operate on the principle that certain matters may be considered on facts on the theory of official notice, you will assume further that the Board can add two and two and leave certain matters for briefs or oral argument and if you will take all these things into consideration, I am sure some of the things we have been
745 spending time on, we will not have to spend any time on at all or we can spend less time upon them. I do not make these remarks by way of criticism of any party at all. I realize the case is an important one and I realize further the tendency of counsel, whose primary duty is, of course, to their respective clients, to do the best they personally know how and as they themselves see their own case. I ask you gentlemen to bear the considerations I have referred to in mind and endeavor, so far as you can, to shorten the hearing as much as possible. I do not like it, as Trial Examiner, to interfere with your own presentation of your cases. I assume that I can, within my function as Trial Examiner, to a degree, be a bit more strict than I have been. I am inclined to think at the moment. I have not been as strict as I should be. I hope that I can continue to be fairly liberal but unless the pace does speed up, I will either have to lengthen the hearing somewhat or cut down a bit at some point where I think we are going into matters which, if not speculative, are at least quite remote. You may proceed.

ROBERT F. TURNBULL

resumed the stand, was examined and testified further as follows:

Direct Examination (Continued).

746 Q. (By Mr. Nelson) Mr. Turnbull, I asked you just before the recess about the matter of discipline and I would like to know just how far you can go as a general foreman.

A. When there are small matters that can be settled in the plant, small grievances where a man is perhaps dissatisfied with his position under a certain operation, or where a man figures perhaps his health does not permit him to do that operation and small matters like that we can change the man around and accommodate them and satisfy them.

Q. That refers to transfers?

A. From one part to another part and small grievances of that type.

Q. Can you transfer from one department to another?

A. Oh, no.

Q. Does that apply both to general foremen, foremen, and assistant foremen?

A. Yes.

Q. It applies to all three ranks?

A. Yes.

Q. Do you fix the pay of either the supervisory or hourly rated employees under your supervision?

A. No.

Q. What can you do in that connection, if anything?

A. Nothing.

747 Q. Can you recommend?

A. You can recommend a change of classification; if a man is working on a job out of a classification you must put him on his correct classification for the job.

Q. The pay itself you cannot even recommend?

A. No.

Q. As to promotion. What is the extent of your power? Can you promote a man, either in a supervisory capacity or hourly rated capacity under your supervision?

A. You can promote a man to a utility man or a leader provided it is agreed to by your superintendent.

Q. It has to be agreed to by him?

A. Yes.

Q. In writing?

A. Yes.

Q. You have to get permission to put those people on.

Mr. Donovan: Just a minute. Your question coupled with the previous similar questions are a little ambiguous. In one place you say, "Can you promote" and then "Can you recommend." Which was the witness answering to when asked about promotions? Whether he can make the promotions or originate a recommendation?

Q. (By Mr. Nelson) Can you promote? Have you the power or the assistant foreman or the general foreman or the foreman?

748 A. No.

Q. Can you recommend promotions?

A. Yes.

Q. To whom do you recommend?

A. The superintendent.

Q. And that applies to all of these ranks of foremen?

A. Yes, sir.

Q. Now, the allowance of days off? First, is that covered by a rule if the days are few?

A. A company rule.

Q. And how many days without some formal action?

A. There is a Company rule that they can have three days absent without any permission or anything.

Q. Now, after that, has the general foreman any power to allow more time?

A. He can grant up to fourteen days leave of absence.

Q. Can the foreman or the assistant foreman grant the same thing?

A. Yes. The general rule is to ask from the superior whether the man can be spared off the job. You use your judgment, in other words.

Q. There is some discretion in that?

A. Yes.

Q. Getting beyond fourteen days, is there any discretion?

A. No.

749 Q. Who has that power?

A. The personnel office.

Q. As to the matter of fixing vacations? That is, the time of vacations and the length of the vacations, who has any power in that respect?

A. Your division manager is the man in our place.

Q. Have you any power as general foreman, foreman, or assistant foreman?

A. No.

Mr. Donovan: Do I understand, Mr. Nelson, that the Petitioner contends that the foremen should have the power to fix vacations?

Mr. Nelson: We are not contending anything. We are showing the facts and not claiming one thing or another.

Mr. Donovan: Is it your theory that foremen should have that power?

Mr. Nelson: Foremen should be consulted certainly as to his own.

Mr. Donovan: You didn't prove that he was not consulted. You show that he does not have the power to fix vacations only.

The Witness: It is mutual, you might say, Mr. Nelson. The superintendent has told us that we have two weeks vacation and we try to work it out amongst the foremen themselves as to which is suitable. When they

750 want to go and so on. We will not go six at one time. We will go two at a time or two in one week and two in another week and work it out between ourselves. That is acceptable to Management on that basis and we do have that much say in it.

Q. (By Mr. Nelson) As to sick leave, is that fixed by rule?

A. Yes.

Q. And you have no power as a foreman, assistant foreman, or general foreman, to change that?

A. No.

Q. This personnel office, have you any direct connection with that? Is that an office that you can go to?

A. Yes, we have just lately inaugurated a new system with the personnel office whereby there is an industrial

relations man or personnel man put into each division and on any case that we have where there is an infringement of the rules, or some difficulty arises in the shop that man is there to discuss the situation with.

Q. Now, does that apply to both the hourly rated employees and the supervision?

A. Well, he is there.

Q. Does he have jurisdiction in both cases?

A. Yes.

Q. He does?

751 A. Yes.

Q. So you have access to the same man for supervision and hourly rated employees?

A. I don't quite understand that question.

Q. Does that divisional representative of the personnel office have jurisdiction of, we will say, a complaint or grievance of a foreman as well as an hourly rated employee?

A. Not the foremen, only the hourly rated employees.

Q. And that applies to foremen of all rank?

A. Yes, we have no place to go with a grievance, there are no provisions for foremen.

Mr. Donovan: You have no what?

The Witness: We have no place to go with a grievance for a foreman, Mr. Donovan.

Q. (By Mr. Nelson) Coming to the matter of grievances of the rank and file, this statement that you just made now covers that in its initial stages, is that correct, is that how you take it?

A. Yes.

Q. Do you take the rank and file men, the hourly rated employees with whom—with whom does he first take up any troubles?

A. First with the steward.

Q. His steward?

A. Yes.

752 Q. And then it comes to whom?

A. The steward and the foreman.

Q. Does that mean the assistant foreman, the foreman, or the general foreman?

A. With the foreman.

Q. The foreman directly over him, the foreman nearest the man complaining?

A. Yes.

Q. From there, where does it go?

A. To the personnel man in the division, and the district steward for that district.

Trial Examiner Jaffee: I am not sure what the witness means by the word "foreman" as he last used it.

Mr. Nelson: I took it to mean foremen of all grades.

The Witness: Yes, where there is a foreman, you have a foreman and when there is an assistant foreman, with men working under him, the steward will deal with the assistant foreman if there is just the assistant foreman instead of a foreman. That is, the steward will discuss the case with the assistant foreman.

Q. (By Mr. Nelson) The assistant foreman?

A. Yes.

753 Q. Now, what power has that assistant foreman or foreman in that case? Can he dispose of the grievance?

A. If it is a very minor grievance, yes.

Q. And if not?

A. Well, if it is one of a Company policy where a certain penalty is to be imposed upon a person for doing a wrong, we have to impose the penalty and it has to be agreed upon by the steward. If the steward doesn't agree upon it, it comes to the personnel man.

Q. In case of a grievance by a foreman, is there any procedure recognized?

A. No.

Q. I would like to ask you, Mr. Turnbull, whether in your experience with the Packard Motor Company, you or any foreman of any rank participated in any way in the making of the policy of the Company with respect to its expenditures?

A. No.

Q. Or its purchases?

A. No.

Q. Of materials, machinery or equipment?

A. No.

Q. Or the financing of the Company?

A. No.

Q. Or the scheduling of the work?

754 A. No.

Q. Or the relations of the Company to the business?

A. No.

Q. Or its relations with the Government, of any kind, local, state or federal?

A. No.

Q. I will ask you whether any foreman of any rank that you know of at the Packard Motor Company has any power to make a contract or agreement binding upon the Company?

A. No.

Q. Whether any foreman of any rank that you know of has taken any part in the bargaining with the maintenance or production or hourly rated workers?

A. No.

Q. Do you include in that the matter of inquiry and advice; that is, whether they have ever been asked about it? Do you know of any foreman that was ever asked about such a matter?

A. No.

Q. Were you ever asked about such a matter?

A. No.

Q. Is there ever any occasion in the experience you have had there when the foremen met with Management?

Mr. Donovan: Mr. Trial Examiner, I do not see the relevancy of this, because there is no secret about

755 the fact that we have declined to collectively bargain with the foremen.

Mr. Nelson: That is not what I have in mind.

Trial Examiner Jaffee: No, I do not believe that is what he has in mind.

Mr. Nelson: I mean, do you make suggestions in the plant or out of the plant with representatives of Management of the Packard Motor Company as foremen?

The Witness: Well, yes.

Mr. Donovan: I object to that, because the word "representatives" is not defined, and that is an issue here.

Mr. Nelson: I withdraw that question then.

Trial Examiner Jaffee: I think the witness has not

finished his last question. I believe he had said Yes but intended to say more. I will strike that answer for the time being.

Mr. Nelson: Very well.

Q. (By Mr. Nelson) Do you know of any representatives of Management at the Packard Motor Car Company?

A. I know them, yes.

Q. Who would you suggest, as, in your own mind, being a representative of Management?

A. Well, Mr. Weiss, sitting over there, and Mr. Denison.

Q. What offices do they hold?

756 A. I am not quite sure what offices they hold. Mr. Denison, I think, is in Mr. Ferry's office, the treasurer.

Q. And they are representatives of Management, as you understand them?

Mr. Donovan: Did he include the president?

Q. (By Mr. Nelson) Well, do you know the president?

A. Yes, I have met Mr. Christopher.

Q. As a foreman and on Company business?

Mr. Donovan: You are asking him as to socially now?

Mr. Nelson: I will ask him either way. Let him tell it.

A. Yes, I have met him as a foreman.

Q. (By Mr. Nelson) Did that involve policies of the Company?

A. No.

Q. What was it?

A. The last time I met Mr. Christopher was when we built the fifty thousandth aircraft engine and we had a small ceremony in the department when that engine was completed, and we had certain Navy and Army officials there and a little speech from some of them and I met Mr. Christopher at that time. In fact, I stood and spoke to him for a minute or two in company with the chief steward on my shift and the general foreman and chief steward on the opposite shift. We had our photo-

757 graphs taken with that engine.

Q. Was there anything in the nature of consultation or seeking advice of you, or anything of that nature?

A. Oh, no.

Q. Or any other foreman, that you know of?

A. No.

Q. There are foremen's meetings, are there not?

A. Yes.

Q. Let me inquire whether in those meetings for instruction or talks by representatives of Management, whether all grades of foremen are at those meetings?

A. Yes.

Trial Examiner Jaffee: You mean, altogether?

Mr. Nelson: Yes, at the same time.

A. Yes, at the class I meet with there is assistant foremen, general foremen and superintendents.

Q. (By Mr. Nelson) All at the same time?

A. All mixed together.

Q. We have here a long list of subjects that have been talked about. Did you attend some of those meetings?

A. Yes.

Q. And you heard Mr. Dahling inquire of Mr. Traen about them?

A. Yes.

Q. Were you present at any of those meetings since
758 you became a foreman?

A. Yes.

Q. Is it true that all grades of supervision were present at those meetings at the same time?

A. Yes.

Q. Now, does the general foreman on the present plan of operation at the Packard Company do any work, I mean manual work himself?

A. No.

Q. Does the foreman do any manual work?

A. No.

Q. Do the assistant foremen do any manual work?

A. No.

Q. Is there any foreman of any grade who does any manual work as a general proposition at Packard?

A. No.

Q. The highest man who does that is the leader, is he: that is, the highest in rank, speaking generally, of course?

A. Yes.

Q. Of course, I am leaving out the matter of some crisis or accident, or something of that kind.

A. Yes.

Q. Does the foreman have any power in the matter of a layoff, that is, a temporary layoff?

A. No.

759 Q. Where does that go?

A. It comes to you from the—well, we get it through from the division manager.

Q. Does the division manager tell you what hourly rated employees to let go?

A. Yes.

Q. Does he also tell you what subordinate supervision to let go?

A. Yes.

Q. For how long, does he give you the period of time?

A. Well, if they go, they go, that's all.

Q. I see. Mr. Turnbull, as I understand it, your members of Chapter 5 of the Foreman's Association of America want a Packard Motor plantwide supervisory representation, is that right?

A. Yes, please.

Mr. Donovan: Might I have that last question and answer read?

Trial Examiner Jaffee: Will you read the question, please?

(Question and answer read.)

Mr. Donovan: I did not understand the question. May I have it repeated?

Trial Examiner Jaffee: In other words, they want a single unit at Packard's for supervisory employees.

760 Q. (By Mr. Nelson) As I understand it, you want to cover the general foremen, foremen and assistant foremen. Here is the word "assignment men", what does that mean?

A. Special assignment men.

Q. Special assignment men who are supervisors?

A. Yes.

Q. You have already indicated the general powers and limitations on the work of the general foreman in an affirmative way. What would you say were the duties and responsibilities of a general foreman at Packard's?

A. In my own instance, it is my duty to see that the

amount of motors are built each day, according to the schedule set up by the Management.

Q. How many foremen do you have under you?

A. Six.

Q. What is their rank?

A. Foremen.

Q. What is your pay?

A. $304.05 per month on a forty hour weekly basis.

Q. In fact, do you have some overtime?

A. Yes, at present we work ten hours a day and for those two hours we get time and a half pay.

Q. It averages currently, about how much a month?

A. I would say about $500.00. I never did add it up.

Q. But somewhere around $500.00 a month?

761 A. Yes.

Q. Now, the foremen?

A. The foremen have $278.00 per month on a forty hour per week basis.

Q. And he has some overtime that brings that up to about what, currently?

A. Oh, I suppose it would run about 450 or 460.

Q. And what are his duties?

A. A foreman, as a rule, has a group of men in the department, this one group which may be a matter of anything from 25 men; some have as little as 25, some have as high as 100 men.

Q. Under his supervision?

A. Yes. It would be a part of the complete assembly; a feeder line of the assembly department.

Q. From whom does he take directions?

A. That's my job.

Q. From the general foreman?

A. Yes.

Q. To whom does he pass the instruction or direction on?

A. Well, to his leaders, or if he has an assistant foreman, he, of course, would notify his assistant foreman. At present, we have no assistant foreman.

Q. On your particular job?

A. That's right.

762 Q. Take these assistant foremen; what is their rate of pay, currently?

A. I think it runs to $242.00 a month, I think. Just around about 242 or 247 a month.

Q. With some overtime?

A. That's on a 40 hour basis and of course, he gets time and a half for those two hours overtime.

Q. And that brings him up to about what, per month?

A. I never did add it up. He would have about $40.00 a month less than what the foreman would have.

Q. Now, the special assignment men, they are supervisory, are they not?

A. Yes.

Q. And they may be of any one of these ranks?

A. They are general foremen or generally foremen in that classification. I don't know of any assistant foremen on that classification.

Q. And they average just about as you described in these other classifications?

A. Yes, sir.

Q. Their duties, however, are supervisory, are they?

A. Yes.

Q. And there is a considerable number of them?

A. I don't know how many, I don't know how many there are in the plant, Mr. Nelson, offhand.

763 Q. Do you have in mind how many general foremen there are in the plant at present, approximately?

A. No.

Q. Or foremen?

A. Well, foremen, well, I would only be guessing.

Q. Or assistant foremen?

A. No, I couldn't tell you.

Q. Do you have in mind, approximately, how many persons in these four classifications performing supervisory duties there are in the whole plant? In other words, if you had them all, what is your possible total?

A. We had 868 on our books as of the date of our petition and I don't think there is any more than two or three that don't belong to the Foreman's Association.

Q. But, now, by "your books" you mean that they are members?

A. Yes.

Q. And of the possible number that would be eligible to membership, you think there are only two or three?

A. Yes, very few in any event.

Q. Are all four grades of foremen described by you in your testimony just given salaries?

A. No, there are some hourly paid assistant foremen and I believe there are one or two hourly rated foremen, but the majority are salaried people?

764 Q. Within the figures that you have given, approximately?

A. Yes.

Q. Is there lately any arrangement for vacations for supervisors at Packard; that is, vacations with pay?

A. Yes.

Q. What is that arrangement?

A. Up to one year's service, they get two weeks vacation. I think there is a new schedule came out lately, I'm not quite sure whether they give more to anyone with any greater length of time, but it seems to me if they have only six months' service, they get one week's vacation. I may be wrong on that, though.

Q. Would that come out in writing, or did that come out in writing so that you had access to something in writing?

A. Yes, we got a query to that effect.

Q. Were the foremen consulted about it in any way?

A. No.

Q. Is there an arrangement as to sick leaves for the supervisory force in effect at present?

A. Yes, that came out at the same time.

Q. What is the nature of that?

A. One year's service, I think, you get 12 days; for two years, it is a little longer, and it goes up, I think, to about 31 days, it's according to the length of service. I'm not sure of the amounts.

765 Q. Is there any reliable arrangement with respect to the seniority of supervisors?

A. Oh, no.

Mr. Donovan: Just a minute, I will ask that that be stricken out on account of the use of the word "reliable."

Trial Examiner Jaffee: The previous question may be stricken.

Q. (By Mr. Nelson) Is there any arrangement as to seniority for supervisors at Packard?

A. No.

Q. Is that one of the things you want?

A. Yes.

Q. Is there any arrangement with respect to promotions?

A. No.

Q. Or transfers?

A. No.

Q. Or discharge of supervisors?

A. No.

Q. What does a supervisor do, currently, at Packard's if he feels he is entitled to a raise in pay?

A. He will see his next superior.

Q. Is that all he can do?

A. Well, he can go to the one after that, the next one, if he doesn't get satisfaction there.

766 Q. That is, he can pass from one superior to another?

A. Yes, as an individual.

Q. As an individual?

A. Yes.

Q. Has any foreman representation or any assistance in that effort as it stands now?

A. No.

Q. If he has a grievance, what can he do about it other than pay?

A. Exactly the same thing. He has to go to his next superior and follow through from there.

Q. Has he any representation or assistance in that?

A. No.

Q. He stands on his own feet?

A. Yes.

Q. Now, do I understand correctly, when you have these supervisors' meetings or schools, that the Company provides a speaker?

A. Yes.

Q. Who talks on a topic?

A. Yes.

Q. Is there any opportunity given the foremen to take part in the discussions or to raise any questions that might be on their mind?

A. Oh, yes.

767 Q. There is some?

A. Yes.

Q. To what extent?

A. Well, you can ask a question on whatever the discussion has been and the teacher, if possible, at all, will endeavor to answer.

Q. On the subject set?

A. Yes.

Q. Can you get outside of that and introduce subjects of interest to foremen?

A. No.

Q. Is there any place or person to whom the foreman may go other than what you told us on the specific items and in the manner you have described?

A. No.

Q. Mr. Turnbull, is there an insurance coverage of the hourly rated workers at Packard?

A. Yes.

Q. In addition, we will say, to the Workmen's Compensation?

A. Yes.

Q. Does the supervisory force benefit by that coverage?

A. Yes, exactly the same.

Q. It is shared with the maintenance and production workers just the same as though they were workers?

A. Yes.

768 Q. Are there bonuses or just overtime?

A. Just overtime.

Mr. Nelson: We offer the witness for cross-examination. While we are waiting for you, Mr. Dahling, I will ask the witness one more question.

Q. (By Mr. Nelson) Did you take part in the strike?

A. Yes.

Q. I suppose you had in mind the objectives and purposes of it?

A. Yes.

Q. By the way, have you anybody close to you in the Armed Services?

A. Yes, I have two sons.

Mr. Donovan: I will ask that be excluded. Who hasn't anyone close to him in the Armed Services? Why should it be in the record here.

Mr. Nelson: He struck and he has two boys in the Service.

Mr. Donovan: Are you still proud you struck in spite of that?

The Witness: Yes.

Mr. Donovan: You are proud of it?

The Witness: Yes, my boys told me to do that and to stand by—

Mr. Donovan: (Interposing) And you would do it
769 again tomorrow?

The Witness: Yes, my boys told me to fight for principles. That is what we are fighting for and it is nothing to be ashamed of.

Mr. Donovan: It is nothing to be ashamed of?

The Witness: No, it is nothing to be ashamed of and I am proud to fight for the things that my boys are fighting for and they told me to go on strike too.

Cross-Examination.

Q. (By Mr. Dahling) Mr. Turnbull, I believe you testified that you were one of the first to start in the aircraft division at Packard?

A. Yes.

Q. About when was that division started?

A. That is in the aircraft assembly end, of course. The machine shop end went on a few months before that, I dare say, six months or more before that in the assembly end. I started in there in May, 1940, I think it was, to be exact.

Q. How many departments do you supervise?

A. Two.

Q. Two departments?

A. Yes.

Q. Does that include a department that has to do with the main assembly line?

770 A. Yes.

Q. And also a feeder line?

A. Yes.

Q. How do these engines—and I assume they are Rolls Royce engines—come down the line? Are they attached to an overhead trolley?

A. There is a conveyor that comes along on the floor.

Q. Does that conveyor come along and your workers do something with that engine?

A. Yes.

Q. What do they do? What is their operation?

A. The engine will start at one end of the line with a crank case and have various operations and parts that are put on that crank case as it comes down the line, until it is completed and sent over to the test cells.

Q. It starts out just as a motor block, would you call it?

A. As a crank case.

Q. And then that crank case is completed as it goes down this line until it goes out as the completed crank case?

A. It will start as a crank case and as it feeds along, the crank shaft will be put in and then it comes down a bit further and the reduction gear is put on and then the cylinder blocks are put on and then it comes down further again and what we call the lower crank case pan or the lower pan is put on and then it will go a little

771 further and the wheel case is put on and then the super charger is put on and the crank shaft assemblies is put on a little further down the line and then the magnetos and oil pumps and the various adjustments are made and the after-cooler and the various parts until it comes around and is primed with oil and weighed for weight and inspected at that point again and then it is ready to be shipped to the test cells.

Q. It comes off the line as a completed unit, as a Rolls Royce aircraft engine?

A. Yes.

Q. You said that one department of yours has something to do with the main assembly line. What parts do your workers place on this engine? What are their operations there?

A. I have the whole department, Mr. Dahling.

Q. You have that whole department?

A. Yes.

Q. Then the workers under you put into this engine or attach to this crank case these various things that you have just described?

A. Yes.

Q. Now, as a matter of fact, the operation is broken down into great details, isn't it?

A. Yes.

772 Q. And the workers would only have to do or know one or two of those details to accomplish their purpose on the line?

A. Yes.

Q. And that is the reason it is broken down into great detail, is it not?

A. Yes.

Q. So that you can take people who have had no particular experience in that sort of work and break them in in a hurry and they can do a good job?

A. Yes.

Q. Those men, in doing that job, are under your supervision?

A. Yes.

Q. And there are a number of men that you have on your line that have never done that type of work before?

A. Yes, that is right.

Q. And none of the men you have on the line could step up and take your job at the present time, could they?

A. Well, they did away with the King of England and they got another one pretty quick. No man is indispensable.

Q. That is a very pat answer, Mr. Turnbull, but it is

not an answer to my question. Do you really think any of these workers working on the line on one or two of these operations could take your job?

A. Well, they would have to be trained for it, that
773 is the answer.

Q. They would have to be the right type of person also?

A. Yes.

Q. To be a foreman, you have to have more than just mechanical training, don't you?

A. Yes.

Q. You have to have a certain amount of leadership?

A. Yes.

Q. And you have to be able to get along with your men?

A. Yes.

Q. That is true, isn't it?

A. Yes.

Q. And you have to have a lot of sound judgment?

A. Yes.

Q. And good common sense?

A. Yes.

Trial Examiner Jaffee: Whereas, to be a king you just have to be born right.

Mr. Dahling: I think that is true.

Q. (By Mr. Dahling) Of course you have to be able to demonstrate to the people working on the line the work they have to do.

A. Yes.

Q. And you have to interpret and follow out the directions of your next rank of management, do you not?

774 A. Yes.

Q. By the way, who is your next immediate superior?

A. Mr. Al Kline, superintendent.

Q. What are his duties there, Mr. Turnbull?

A. Well, he has to watch that everything runs in order, that we get the parts, and he has to watch the stock division end of it that the parts are flowing in right. He has to be consulted on many a case where there is perhaps difficulty in assembling parts, such as if a part may come in

does not quite fit. We have to find out why and he will contact another division or discuss it with the inspection department and, of course, on various things I have to discuss with him as to the operating of the division.

Q. And he supervises—he is your supervisor, would you say?

A. Yes.

Q. And, generally, he supervises the department that you operate?

A. He has FF Department, FMA Department and the FSB Department. He has three departments that he supervises, that is the stock division end, and the assembly department and the FME Department, three departments.

Q. And he would have a right, would he not, to recommend your advancement?

A. Yes, he would recommend it to the division manager.

775 Q. And he could also have a right, if he felt you were not doing the job properly, to recommend your replacement, wouldn't he?

A. Yes.

Q. Now, you, as general foreman, would have a right to recommend the promotion of a foreman under you, wouldn't you?

A. Well, I could talk to the superintendent about it, yes.

Q. You have a right to tell the superintendent that so-and-so, you feel, should be given a better job.

A. Yes.

Q. And if you felt that you would make that recommendation, wouldn't you?

A. A verbal recommendation to him, yes.

Q. And you might recommend that an assistant foreman be made a foreman?

A. Yes.

Q. Now, if it came to you—if you had a part that came to you that was not a proper part, who would report that to your department? If the part that came in was not a proper part, how would you hear about that?

A. Well, the foreman on the line, whatever group he was in charge of, if he got a part like that, he would either call

the inspection end of it or he might tell me and I would see the inspection department about it.

776 Q. And if you could not work it out, you might go up to the superintendent and take it up with him, I presume?

A. I would keep him informed at all times about any difficulties like that in the department.

Q. And, in turn, the superintendent is supervised by whom?

A. The division manager.

Q. And the division manager would be supervisor of a number of departments?

A. Yes.

Q. And I suppose he would function with the superintendent about the same way you do, only on a broader scope, isn't that true?

A. Yes, I imagine so.

Q. And he might have more than one superintendent reporting directly to him, I suppose?

A. Oh, yes.

Q. And those superintendents would just carry their reports up to him which would include your report to your superintendent?

A. Yes.

Q. And he would have general supervisory powers over the superintendents and over his whole division?

A. Yes.

Q. In other words, when you get back to your superintendent, he goes to his division manager to get cer-

777 tain approvals, doesn't he?

A. Yes.

Q. Just the same as you go to, as you say, to the superintendent, for approvals?

A. Yes.

Q. And as your foremen come to you for approvals?

A. Yes.

Q. Now, if your superintendent wanted to recommend a raise in pay to you, who would he recommend that to?

A. I didn't quite understand that. If he wants to recommend a raise in pay to me?

Q. For you.

A. Oh, for me.

Q. Yes.

A. He would have to see the division manager.

Q. Just the same as if you wanted to recommend the raise in pay of a foreman or of one of your foremen, you would take it up with the superintendent, isn't that true?

A. I suppose I would, but it would be useless under the setup we have now. There is so little difference between the pay now that if I raised the foreman, he would have as much as me right away.

Q. Let's assume that you were raised and you thought the foreman should be raised under you, you would make that recommendation to your superintendent, wouldn't you?

778 A. I don't know that I would even try to, now, Mr. Dahling. What's the use of trying to get a raise?

Q. Let's not waste time on that. Let's put it more generally than that. On things that you have the just power to recommend, you recommend and make your recommendation to your superintendent?

A. Yes, I think my superintendent would think I was stupid if I made such a recommendation. I wouldn't make one.

Q. We are getting away from the one point now. You have certain powers under which you can make certain recommendations?

A. I never heard of anyone going up to the superintendent to raise any foreman up. He would give it to me fine for it.

Q. I thought we passed by the question of raising foremen. Let's say that you decided that the line could operate more efficiently if certain changes were made. What would you do after you had arrived at that conclusion?

A. Well, I would discuss that with the superintendent.

Q. And if the superintendent on the other hand, decided that it would be more efficient in the manufacture to cut out one of the feeder lines, who would he discuss that with?

A. Well, he would have to discuss that with the Divi-

sion manager and the processing department end of that.

779 Q. If a foreman had some recommendation to make with respect to the operation of the line, would he discuss that with you?

A. Yes.

Q. Now, just to get a more or less complete picture, let's take a usual ordinary shift. What shift do you work, by the way?

A. On the afternoon shift.

Q. That shift is between what hours?

A. Seven-thirty at night until six in the morning.

Q. You go on the shift, we will say, at seven-thirty; after you arrive at your particular designation, what do you do?

A. I report to the superintendent first.

Q. Why do you report to the superintendent?

A. Because as a general rule, the division manager leaves a note on any part or anything that is of interest that we should know, such as a need for service parts or certain items and he leaves word for the superintendent to see those parts are gotten. I have to report there to get my orders.

Q. You report to the superintendent and get your orders. What do you do next?

A. Then I go and I check to see whether the day shift general foreman has left a note. We leave notes for one another when we quit work, telling each other of any

780 difficulties we have encountered, and advising each other what to overcome and what changes to make. The two shifts try to work hand in glove as much as possible. We try to stop a shortage of stock and if a part has given us trouble; we try to leave notes to each other if we have any trouble with stock or parts or anything of that nature so we know how to start out.

Q. Do you change clothes when you go to work?

A. No.

Q. You wear ordinary street clothes?

A. Yes.

Q. You go to an office?

A. Yes.

Q. You have an office?

A. Yes.

Q. Do you have anyone in the office with you?

A. Well, there is a timekeeper end of it there. They have a girl in there. She takes care of looking after the time and she types any queries that I might need typed up or anything like that and the foremen also use that office if they have any queries to write up. Any of us use that one office.

Q. That is considered the office of the general foreman?

A. There is no designation as such on it. That is the one we have used. I don't know that it has a

781 special office that I can call my own.

Q. Well, we will say you arrived at your office after reporting to your superintendent and you have received your orders and seen the note from the general foreman on the shift preceding you. After that, what do you do?

A. Well, the first thing I do is to walk out on the floor and check each sub-assembly line to know how they stand for manpower and attendance. Absenteeism, as you all know, is quite a problem. We have to find out how we are placed for men. We have so many absent on one sub-assembly and we may have to find people from one end or another to balance up the labor-load so that we will be able to get out production at all points.

Q. You have to see if you have sufficient manpower to run the assembly lines?

A. Yes.

Q. And if you haven't sufficient manpower, what do you do?

A. We have still got to get production out. We have to scrape from here and there to get whatever we can and manipulate our manpower accordingly. We may leave the man on one job for half a night and move him or transfer him to another to maintain our production off that line. We struggle to get production, in other words.

Q. At this time it is very important to get out the production?

782 A. Yes.

Q. And you use your best judgment in distributing your men around your department to produce the engines that should be produced?

A. Yes.

Q. I presume you have in mind also the capabilities of these men and select them with that in mind?

A. You do not have much choice nowadays.

Q. You select the best you can although he would not be as good as you would like him to be?

A. You cannot move them around the shop as you want. You have to move the men by seniority on that basis. You have a steward to contend with.

Q. You mean that if you move a man temporarily for one hour or two you have to get the consent of the Union for that?

A. Yes, you have to speak to the steward, because the man can refuse to go.

Q. You mean you cannot move him for only one hour?

A. You must consult with the steward before you make a move for any extent.

Q. Don't you mean you cannot reclassify the man without consulting the Union?

A. No.

Q. You cannot move him from one job to another
783 job without consulting the steward?

A. You discuss that with him.

Q. And if you cannot move him and do not have sufficient manpower to get the production, the production will fall down, will it not?

A. We do not have that trouble usually. The steward I have is a level-headed fellow and we get quite a bit of cooperation from the steward. In other words, they cooperate with us and they are level-headed about things like that.

Q. That is another attribute for a foreman, a foreman must have the ability to get along with people.

A. Yes.

Q. And he must be even-tempered and not lose his temper.

A. Yes.

Q. You have now gotten to the point where you have checked up to find out if you have sufficient men and you arrange them in your department to produce the engines that the schedule says you should produce. What do you do next?

A. The next thing, I will inquire from the foreman as to any shortages on the floor. Maybe one sub-assembly is rather tight on a certain part. I check on that and see that everything is in order for the flow of materials to that sub-assembly line and then I have to check with the stock division again to see that those parts are
784 coming in and I make sure the parts are coming right and do not tie up the feeder line.

Q. And if you find they are not coming through properly, —and if you find that they are coming in properly and you have made your arrangements, then what do you do next?

A. Any difficulties that have been encountered by the day shift,—well, I will take that note and check the operation and notify the foremen there that they have had trouble with that on the day shift and that he is to watch out for it on the night and let me know if there is any difficulty there.

Q. And if he does run into difficulty and notifies you?

A. Well then, I will call a special assignment man and perhaps by this time the inspection is on the job and if possible, I will get the special assignment man to check up on the various parts with the different divisions where the parts are made and get the mistakes rectified and as quickly as possible. I might even call on the phone the foreman in the department where the part is made and tell him about it so he does not get any more scrap parts or anything like that coming through and I might let him know what the difficulty is that we are having.

Q. It is quite important that the parts as they come through be exact as to specifications?

A. Yes.

785 Q. And it is very important that the engine be properly assembled?

A. Yes.

Q. If they are not properly assembled it may result in serious air crashes?

A. Yes.

Q. When you complete that job, what do you go to next?

A. By this time you have an hour pretty well over and you check the hour's production which comes through. There are certain amounts that have to come through every hour and a report is taken every hour from the main line as to the number of engines that have been finished in the first hour and all the operations in that line and the number of parts assembled in each hour as it comes down through the night.

Q. And you check that once each hour, you say, to see you are keeping up with production?

A. Yes.

Q. And if you find your production is lagging, what do you do?

A. Then you go and find out why immediately.

Q. And that is a matter that is up to you to correct as foreman?

A. Yes, and not only correct it, but report the reason why to my superintendent immediately.

786 Q. And what if there is a breakdown on the line? What do you do?

A. All you can do if there is a breakdown on the line is to call the maintenance department and have them come and fix it and you also report that to the superintendent immediately.

Q. Well, we will say that you have checked production and you find the production going through properly. What other duties then do you have?

A. Well, you have various things that come up. You may have to discuss a situation that a steward brings to you with regard to some point or other.

Q. You mean, some grievance that might come up?

A. It may be a grievance or it may be a matter of transferring a man from the day shift to the night shift, or some discussion along that line, and you discuss that with him, and things like that.

Q. You discuss it with him and if you decide it is all right to transfer the man, what do you do then?

A. If a man has seniority to change from one shift to

another, you have no alternative but to agree to that, and the steward tells you to make up a query and you just leave that for the day shift to arrange that transfer, after making up that query.

787 Q. So you pass on this question of seniority check-up, and see if it is all right and if it is in accordance with the contract you okay it and if you feel it is not, you will not okay it?

A. You can't okay it unless the seniority is okayed for it.

Q. Yes. What other matters might come up between you and the steward on the shift?

A. Well, you may have, for instance, he might think that some man is entitled to be moved from one job to another and he will come and ask you about it. Well, you see, if this man is to be moved from one classification to another, or anything along that line, you can discuss that with him and come to an agreement on it. If he isn't in line with his seniority, you can't go ahead with it.

Q. And that is the end of it, then?

A. Yes.

Q. I suppose at times you and the steward might not agree?

A. Oh, yes.

Q. After discussing it with him, he might be able to convince you he was right, I suppose?

A. Yes.

Q. And you exercise your judgment in that matter and if you think what he asks is in accordance with the Union contract, you go along?

788 A. That's right.

Q. Are there any other matters the steward might raise during a shift?

A. Well, it just depends. For instance, last night I had one discussion about the fact that I hadn't enough men to do a certain job—it was just a small job. We have solvent in tanks for parts to be washed in, and I didn't have enough janitors or parts washers and I ran into a little difficulty with the steward and we had to get together on that. He complained about the men complaining about emptying these tanks themselves.

Q. But you came to an agreement with him?

A. Yes.

Q. How did you solve that difficulty?

A. He said I should get more janitors in that department and I said that I had requisitioned four more janitors for over a week ago and they sent me women and women can't do that job. I said that in the meantime I thought the men should cooperate with me and keep the job running.

Q. And you finally convinced him that they should work along with you to keep those engines going along the line?

A. Yes.

Q. Have you any other examples in mind?

A. Well, there is various ones come up right along. Sometimes you will get a man that complains about
789 his job, complains that the job is too heavy for him, that he has some difficulty. Maybe a man has a rupture and he is on a job that is a little too heavy for him and the steward will get us together and between us we will probably try to put the man on a job that is agreeable to him, more agreeable to him.

Q. I presume you might also decide that the man might have to be sent to the hospital?

A. Well, if it was a case where he was complaining of a pain, I would certainly advise him to get it attended to.

Q. You would have to, of course, decide in certain cases whether the man was just malingering or whether he would need hospital attention?

A. Well, I wouldn't have anything to do with that.

Q. If you thought a man was complaining simply because he was lazy or was nursing a hangover, what would you do about that?

A. Well, there's not much you can do about that now-a-days.

Q. There is no answer to that now-a-days, Mr. Turnbull?

A. No.

Q. Well, in ordinary times, what would you do in a case like that?

A. Well, in ordinary days if a man has to work for a living, he works. Now it is different.

790 Q. That, today, though, causes you quite a bit of trouble, keeping your line going because the situation is a little different today?

A. Yes.

Q. You would say these times are quite unusual?

A. Yes.

Q. It requires a foreman to have a lot of common sense and a very broad viewpoint, does it not?

A. Well, a lot of patience.

Q. A lot of patience, that is right. A foreman these days would have to have a great deal of that in order to do his job, would he not?

A. Yes.

Q. Have you any other discussion on the stewards on the shifts we are talking about?

A. On grievances, I am able to settle or those I am not able to settle?

Q. What happens on those grievances you are able to settle?

A. If I am not able to settle a grievance by a little discussion with him, he writes up that grievance on a special form and he submits that to his district steward. His district steward, in turn, will tell the personnel or industrial relations in the division and then I would get called in front of them for an explanation as to why I couldn't settle it and the case would be discussed.

791 Q. And you would be called in and appear and give your views of the matter and the facts and there would be a discussion and some settlement would be arrived at?

A. Yes, they would settle it some way.

Q. I suppose also, that if you found that some of the foremen or some of the men in your department were not doing their work properly, you would attempt to instruct them or see that they were instructed?

A. Oh, yes.

Q. And if the foreman should report to you that he did not think one of the men on the line was capable of doing the job, you would investigate the matter and discuss it, would you?

A. I would investigate it and discuss it with the chief steward.

Q. If you arrived at the conclusion that this man should be given a little more time to see if he could not snap into the job, why, you would keep him on the line, would you not?

A. As I said, you have got to be patient.

Q. Yes, and in that way you might be in the position, say, of overruling a foreman reporting this man?

A. No, I never overrule a foreman. No, a foreman runs his own line.

Q. Yes, but you might talk with him and say, "Why
792 don't you not give this man another chance?"

A. Yes, if he is agreeable.

Q. But if the foreman wanted him removed from the line and so reported to you, that would be the end of it, would it?

A. No, the foreman would write a query on that and submit it to the personnel department. Before he would submit it to the personnel department he would write a query and ask the steward to okay and sign it, and if the steward okayed and signed it, it would go to the personnel department.

Q. I did not get the first part of your answer.

A. I say, the foreman would write up the query and send a copy to the general foreman, myself, and one to the superintendent and one to the personnel department. Now, if the steward did sign that query and okayed that move, then we would go ahead and make the move. But if the steward refuses to sign the query, then we would send it through to the personnel department, who would conduct a hearing on the case and make disposition of that case.

Trial Examiner Jaffee: We will take a five-minute recess.

(A short recess was taken.)

Trial Examiner Jaffee: We will resume, gentlemen.

Q. (By Mr. Dahling) I believe when we adjourned for

the recess we were discussing these grievances that
793 you took up with the steward or, rather, the steward would take up with you and you gave us some examples. Have you any other examples of grievances that come to your attention as general foreman, other than those you gave us?

A. Only plant violations that are reported to us by the guards that we have to dispose of and take care of.

Q. We will say a violation is reported to you by one of the guards, what do you do?

A. You make out a query and state what that violation was and then the number of the violation ticket is stated right on there and what the penalty is under your setup that the Company put out, such as three days for the first time caught gambling. We make up that query and impose that penalty on the grievance. Then we have to discuss that with the steward again and if he will okay it, then the penalty would be imposed; if not, it has to go through the personnel department.

Q. Do you consider the charge, the facts of the charge at all?

A. Oh, no, we have nothing to do with it. We have no part in it except to write up, impose the penalty set by the Company. There is nothing else we can do.

Q. That would be in the case where a guard reports a violation to you. We will say you observed a violation of some character yourself. What would you do about it?

794 A. I would go through the same procedure. Write up a query, hand a copy to the steward, with a notification, the 24-hour notice that a certain penalty would be imposed, and then he would either sign it, which is very seldom—it generally comes to a hearing with the personnel department.

Q. That is at the insistence of the Union?

A. Yes.

Q. Would you, however, at times, merely reprimand a man rather than impose a penalty on him?

A. You might in some things tell him not to do it again, something like that.

Q. You would use your judgment and take into consideration the man's record and that sort of thing, would you not?

A. The usual thing, usually, is to get ahold of the steward and tell the steward this man has done a certain thing and that you want to reprimand him. If he agrees, you bring the man in, usually in company with the steward—no, not usually; I should have said you must have the steward there at all times.

Q. And you do that in order to comply with the contract? We are now referring to the CIO or workers' contract?

A. Oh, yes.

Trial Examiner Jaffee: Might you simply reprimand a man for such a violation as gambling?

795 The Witness: Well, you would risk the chance of getting fired yourself if the Company knew you did it. You would have to impose a penalty in a case like that.

Q. (By Mr. Dahling) Let us take that situation. What sort of gambling goes on? We have heard a lot about gambling. Is it shooting dice?

A. I have seen all sorts, shooting dice, playing cards.

Q. When they shoot dice, there are usually quite a number of men in the game, are there not?

A. Yes.

Q. Would it not be rather difficult if you came upon a dice game to be certain as to what men were actually in the game and what men might be just looking on?

A. Yes.

Q. You would exercise your judgment in connection with that matter, would you not?

A. Well, I have never caught them playing dice. The guards usually are the ones that catch them on that.

Q. But if you should run into a game of that character, you would use your judgment to determine whether they were all in the game or whether some were just passing by?

A. I would have to get more than that. If I was by myself, there would be eight or nine witnesses against me.

Q. Unless you had some very direct evidence, you could not penalize every one you saw there?

796 A. I couldn't.

Q. And you would have to use your judgment if the Union demanded a trial?

A. That's the only way I could do it.

Q. Or in the case of absenteeism, you sometimes ask that the man be removed from the rolls, do you not?

A. Yes.

Q. You make out regular query forms?

A. Yes.

Q. How do you do that?

A. A man's record is checked back for perhaps a couple of months.

Q. Who does that?

A. The clerk, at our request. If a foreman comes to me and tells me he has had a chronic absentee, I say that the best thing is to get the girl to check his record. If that record is so bad, we write out a query stating it is a 24-hour notice of dismissal. We do that to maybe scare the man a little bit, and those cases, as a rule, go to Personnel, and the man will get a lecture and a warning that should it continue he will be dismissed. If it does continue, the second one is written up, perhaps the steward and Personnel will agree and the man will be dismissed.

Q. In checking over his record, you come to a decision on whether you will prepare this query?

797 A. Yes.

Q. And after looking over the record, you may decide that under the circumstances you will wait and see what develops, is that right?

A. You may watch it a week or two. If it doesn't improve, then the foreman, or whoever the man belongs to, in the group, writes up his own query.

Q. So you use your own judgment in that kind of matter, as to when you are going to send this query through as to the absentee?

A. Yes.

Q. Well, say the query is made out and the steward agrees to it, what happens to it then?

A. Our usual procedure is to ask for him to be removed from the roll of that department because when he goes to

the front office it is quite likely they will put him to work in some other department, even if you try to fire him, so what's the use of firing him?

798 Q. (By Mr. Dahling): In other words, they may need them so badly that they will have to take him and give him another chance somewhere?

A. Yes.

Q. You have no objection to that?

A. I don't like to unload a bad man from myself to some other man. I have no say in that at all. He will probably be of no use to me or anybody else and I do not have any say on that.

Q. And you would feel the man in this case should be discharged and not put in on another department?

A. I would feel that way, yes.

Q. And that would be so even though there is a great shortage of labor and it might be necessary for the Company to use every type of man they can get ahold of?

A. It might be so.

Q. If some of your men should happen to get into a fight, what procedure do you follow?

A. There is a standard procedure about men getting into a fight. They are sent home immediately and a hearing is held the next day. We have just that certain procedure and we have to follow that.

Q. And you appear at that hearing the next day?

A. I have not had to so far but I do not know whether they would even request that I did. I did have one

799 fight, come to think of it, in my department, but I did not have to appear on that, that was taken care of in the Personnel Department.

Q. But if you were actually a witness you might be called to give your report on it?

A. I suppose so, yes.

Q. Mr. Turnbull, we have been using the term "query." When I first heard it I thought it was an unusual word. What do you mean by "query"?

A. It is a typewritten notice. If I write a note to my superintendent about a leave or something else a record should be kept of it or if they should want to keep a rec-

ord of any sort, they will give it to the girl and have the girl type it up because it is easier to read it when it is typewritten than when it is in longhand. It is of a certain size of paper that we have and we write a note and that is a query.

Q. And that is the term that Packard uses for that form of communication?

A. Yes.

Q. And you use that in cases where you ask that a man be removed from the roll? In other words, your communication is that so-called query?

A. Yes.

Q. Where you discipline a man, in a case of gam-
800 bling, that report is called a query?

A. That is right.

Q. Now, your department, or let us say the main assembly department, is laid out in a certain manner, is it not?

A. Yes.

Q. And that is done by some other department of the Company?

A. Yes.

Q. What is that called?

A. That is called the process and engineering department on that, who do that.

Q. And that is laid out with the idea of having the operations run smoothly, isn't it?

A. That is right.

Q. And if you find that after it has been once laid out that it does not operate smoothly and you think you know the reason, would you attempt to get a correction made?

A. I would point that out to the superintendent and he in turn would point it out to the division manager.

Q. When this aircraft assembly was first laid out it was first a small operation, is that right?

A. Well, when we built it first it was built for one or two. We did the whole job completely in a small department big enough to build two or three engines.

801 Q. And you knew quite a bit about the operation of such an assembly line from your previous experience, didn't you?

A. Yes.

Q. And that was the reason for giving you a bigger job on the bigger line?

A. Yes.

Q. Did you discuss with your division manager or superintendent ideas for laying that out?

A. No, that was all set and laid out already. I did not have anything to do with that.

Q. That was set out by the Engineering Department?

A. Yes.

Q. Now, I suppose that in addition to your getting out your production and the right quantity, you have to be sure that the quality is okay also?

A. We have the Inspection Department that checks that for us pretty closely.

Q. And if some of these men who do these operations fail to do them properly, these engines come back to you, do they?

A. They just do not go on any further. If they do a job wrong the inspector puts a tag on it and it has to be fixed before going any further.

Q. What do you do to see that quality is maintained
802 and not to get the rejections?

A. The only thing you can do on that is that you have trouble on that job—they will take it off the line and send it to another department for repair. We have a special department for any repairs. You cannot do repairs on the line. The engine is taken off the line away from us entirely and it is sent to a repair department until that job is okay. That job has to be okayed then by the Inspection Department and the Army and Navy Inspection. It is not put back on the assembly line at all. Once a tag is on I am finished until it is repaired and put back.

Q. And that would be in the case where a certain part that you attached is imperfect?

A. It may be that a thread is stripped when they put a part on a job.

Q. Well, let us say that the quality was not up to standard because of the defective workmanship on the

part of the men on your assembly line, what do you do to prevent that sort of thing?

A. You mean, if a man is doing a job and not doing it correctly what do I do?

Q. What do you do if it is not being done correctly?

A. What I do is that if it came to my attention—the foreman, of course, takes care of it. Supposing it was chronic, then I would find out and see if the man
803 was instructed right. If he wasn't then that is up to the foreman or leader to see that he is. If he is careless on the job then I would get the steward and discuss removing the man from that to an easier one where he could do the job.

Q. Might you discuss the matter with the man himself and see if you could point out methods for correcting it?

A. You let the man in charge of that line do that. I do not talk to the men myself.

Q. Would the foreman in charge possibly discuss with the man and the steward the work he was doing, with the idea of showing him how to do the proper type of work?

A. It is up to him to instruct his men correctly.

Q. Until you have exhausted your efforts in that connection or your foreman had, you wouldn't be moving him off the line, I suppose?

A. No, you couldn't.

Q. What responsibility do you have in connection with the checking of material coming into your department?

A. Well, I do not have any responsibility on that. If it does not come in the only thing I can do is report that it is not there.

Q. But you do see that it is checked when it comes in to determine whether you are getting the proper amount or not and whether there is a shortage, do you not?

804 A. If there is a shortage in parts the foreman reports that to me, that there is a shortage. I get a report.

Q. How many unions have you been a member of?

A. Let's see, one—two. The first one I belonged to, as I told you this morning, was the Scientific Instrument Makers and that one later merged with several others, of

various classifications, into one big union. In other words, there was a toolmakers union, a blacksmith union, an instrument makers union and a lathe operators union and they were all amalgamated together into the Amalgamated Society of Engineers, and then the Amalgamated Engineering Union came of that. That was one union in the old country, in England.

Q. Were you active in union affairs in England?

A. Well, I was much younger then and I wasn't so very active there. I was on one committee in the City of Glasgow. It was a good committee but that was the only committee I was on.

Q. When you came to this country you joined what union?

A. The CIO.

Q. You were active in the CIO?

A. Yes, very active.

Q. When you say "very active," will you explain just what your activities were?

A. I joined it at the very start and when they
805 elected stewards in the department I became a deputy steward. Later the men in the department recalled the man that was steward and I was elected in his place. I then became a steward. Just a short time after that when the contract was signed and set up, they set up a new setup and put it into the contract for a district steward, one for each district. I was elected a district steward. I was at that time district steward over the old main division plant and that comprised about forty-four departments at that time.

Q. And that was at Packard?

A. Yes, at Packard.

Q. Were you working for Packard when you joined the CIO?

A. Yes.

Q. You spoke about the "contract" when you joined the CIO—or perhaps I should say UAW, was that prior to the time of their first contract?

A. Yes—well, the first contract was made out but I did not have anything to do with that, that was made up more

by the International officers, I do believe. We had a National Labor Relations Board vote. I didn't have anything to do with that second contract. The first I had to do with that was when they put the district steward's set up in the contract.

806 Q. As a district steward what were your duties?

A. If a steward couldn't settle a grievance with the foreman in his department then he wrote that up as a grievance and handed it over to me as the district steward. Then accompanied by the personnel man I would go to that department and try to iron out that difficulty for them and if I were not successful with the personnel man then I had to refer it to the last committee to dispose of it.

Q. You were quite busy, I presume, during those years?

A. Yes, I would be quite busy with forty-four departments.

Q. Were you working during that time?

A. I did work some.

Q. But most of the time you were engaged in duties as district steward?

A. I was pretty well occupied with that.

Q. Forty-four departments cover quite a bit of territory?

A. Yes, from the Boulevard up to the new department on Concord and five stories to work on.

807 Q. And about how many men would be in those departments, if you know, approximately?

A. Oh, I don't know that I could tell you that. Maybe we had five thousand men in that division—no, I may be too high; maybe about four thousand men in that whole division.

Q. And you were, during that period of time—and when I say that period of time, I refer to the period when you were district steward—by the way, when would that be?

A. From about 1937 to the early part of 1939, around about February of 1939.

Q. Were you still a district steward when you were promoted to assistant foreman?

A. Oh, no. I got defeated at the election that year and I was just a rank and file worker when I was transferred.

Q. But I believe you said you were busy with Union

activities in addition to being district steward. Did that mean you would attend meetings regularly?

A. I always do attend Union meetings, yes, I always made a practice of that.

Q. Would you say you attended practically all of the Union meetings?

A. Oh, yes.

Q. Did you serve in any other capacity in the CIO Union?

A. No, I never was a member of their executive
808 board, or anything, never took any other office.

Q. I presume, then, that being so active in these unions, Mr. Turnbull, you believe as Mr. Keys, that a Union member has certain obligations to his Union.

A. Yes.

Q. And those obligations included the payment of dues?

A. Yes.

Q. And the attendance of meetings and living up to the Constitution of your Union?

A. Yes.

Q. And he also should believe in the principles of unionism and fight for those principles?

A. If necessary, yes.

Q. Now, on this question of principles of Unionism, what are some of them, so far as you are concerned?

A. My idea of a union is to see that a fair standard of wages is provided.

Q. One is that there should be fair wages? That is a Union principle?

A. That's right, fair wages, fair conditions.

Q. That is fair working conditions?

A. That's correct.

Q. Are those the two main principles of Unionism?

A. Yes, sir.

Q. Is it also a principle of Unionism to have sen-
809 iority? Would you say that is a principle of Unionism?

A. Oh, yes.

Q. So you would add that on as a third principle?

A. Yes.

Q. Well, you might say that what you have given me are more or less objectives rather than principles of Unionism, is that not correct?

A. No, those are principles.

Q. What would your principles of Unionism be as between members of the Union?

A. A condition of cooperation. Help the other man along the road wherever possible to make him a better worker and if possible, better his conditions. In other words, in Unionism you may have one man qualified and another man not quite so good. If you can help that man, then you should do all you can to help.

Q. In other words, the old slogan, "All for one and one for all," applies particularly to Unionism, does it not?

810 A. All for one and one for all?

Trial Examiner Jaffee: You mean as against members of the Union?

Mr. Dahling: As against members of the Union. In other words, you are in there to fight for the interests of the members of that Union?

The Witness: Yes.

Q. (By Dr. Dahling): And you would fight for the interests of one member of that Union?

A. Absolutely.

Q. And for the interests of all the members of that Union?

A. Yes.

Q. So that would be the Union principle, really, "All for one and one for all," is that right?

A. I don't like that way of putting it, somehow.

Q. You do not like to have it put that way?

A. Yes.

Q. I do not want to mislead you now, but if you do not like that statement it is quite all right.

A. I will agree with the other way you asked it 100 per cent.

Q. Now, of course, these Union principles are universal, aren't they? They apply to all unions, don't they?

A. I would imagine so, yes.

811 Q. And they apply to the UAW?

A. Yes.

Q. And they also apply to the Foreman's Association of America?

A. Yes, and the Manufacturers Association.

Q. Is that a union, Mr. Turnbull?

A. Yes, surely, it is a union of the Manufacturers Association.

Q. Did you ever hear of the Manufacturers Association putting out a picket line?

A. Well, you were banded against us during the last strike.

Q. Did you ever see a Manufacturers Association picket line, did you or did you not?

A. No.

Q. Did you ever hear of the Manufacturers Association call a strike in the middle of wartime in Detroit and close the plant?

Mr. Nelson: In 1933 you called it.

The Witness: You didn't have a strike in '43 but in '44 during wartime it was called by the Manufacturers Association, who closed our plants but the Manufacturers?

Q. (By Mr. Dahling): Did the Manufacturers Association call the strike?

A. You are all associated together.

812 Q. I am asking you whether the Manufacturers Association called the strike?

A. It is the same thing, it was a stoppage of war work.

Q. Did the Manufacturers Association ever, to your knowledge, call a strike?

Mr. Nelson: Yes.

The Witness: To my knowledge they shut the plant.

Mr. Dahling: Mr. Examiner, I am not asking counsel questions nor for answers, and I ask that it be stricken in the event that the reporter took it down.

Trial Examiner Jaffee: It is stricken.

Mr. Nelson: Ask the man where he was in 1933 and 1934 and he'll tell you.

Q. (By Mr. Dahling): My question, Mr. Witness, is limited to the war period and I am asking you if the Manufacturers Association ever called a strike in wartime, to your knowledge?

A. I would say that they closed the Packard plant back in May.

Q. May of this year?

A. Absolutely.

Q. They ordered the Foreman's Association of America to stop working?

A. No, they didn't ask us to stop work but they didn't consult us at all. We wanted to work.

813 Q. Well, during the period of the strike in May, the gates of the plant were open, were they not?

A. Yes.

Q. And no one was prevented from going in?

A. No.

Q. Now you believe and I believe that another principle of unionism would be loyalty of the members to the Union?

A. Yes.

Q. And your emblem, I believe, has on it the word "Fidelity"?

A. Yes.

Q. And is it your understanding that fidelity means loyalty and faithfulness and that that in turn would mean that Union members should be loyal and faithful to the other members of the Union?

A. Yes.

Q. And that they should live up to the dictates of the Union?

A. Yes.

Q. And even though they thought—or might not believe in them or believe in a certain action?

A. Yes.

Q. In the Foreman's Association of America does the majority rule?

A. Yes.

814 Q. And if the majority ruled to go out on strike, even though you did not agree with that, you would feel that you would be bound by that?

A. Yes.

Q. And if you should oppose it too violently it might result, if you were an officer, in your being removed?

A. Yes, in a recall.

Q. The officers of the Foreman's Association of America can be removed at any time by the membership, can they?

A. Yes.

Q. They do not serve for any particular time?

A. They serve for a period of one year, but if they don't want you as an officer they will darn soon put you out.

Q. And if you had a leader elected who disagreed with what the majority wanted to do, the first thing that would happen to him would be that he would be thrown out of office?

A. Yes, that could happen.

Q. And then there would be elected an officer who agreed with the majority?

A. Yes.

Q. Mr. Turnbull, how are the rights of the minority of the Union protected in cases of that sort?

A. Well, there would just be a minority group. You
815 take a vote and whatever the vote stands for or whatever the result of that vote is, you are all expected to abide by the majority. The majority rules.

Trial Examiner Jaffee: Just as in a national election.

The Witness: Absolutely the same as in a national election.

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Q. (By Mr. Dahling): When you were appointed or promoted to assistant foreman, did you resign from the CIO?

A. Yes, sir.

Q. Did you feel that you should resign from the CIO?

A. Yes, sir.

Q. Would it have been quite all right for you to have remained a member of the CIO, even though you are a foreman?

A. No, their contract covers that.

Q. If there was no contract what would your position be there?

A. I would belong to a union as long as I could.

Q. And if there was nothing in the contract—in other

words, if the CIO had no objection to it you would
816 have remained with the CIO as a member of the Union?

A. Yes.

Q. And your position would be the same at the present time, as a general foreman; if there was no rule against you belonging to the CIO you would still maintain your membership in it?

A. I would have no reason if it were allowable—but it is not allowable.

Q. If it was allowable you would continue your membership?

A. I don't know about that, Mr. Dahling. I would have to figure that one out. I do not know what would happen under those circumstances. Those circumstances have never arisen and I do not know what I would do under those circumstances.

Q. You said that you had belonged to a union and that you would be a member of a union as long as you could?

A. Yes, but there is a Foreman's Association now.

Q. If there wasn't a Foreman's Association and there was no objection from the CIO would you then remain a member of the CIO?

A. Well, I would like to belong to some union all my time there, whichever union it was that was able to give me job protection and the protection a man should have.

I certainly would belong to a union as long as pos-
817 sible—as long as it was possible for me to belong to one in the category of the job I was in.

Q. And it would not make any difference whether that Union was composed entirely of workers, or not?

A. That again would depend as to the benefits I could derive. If I would get no benefits and if it would do me no good to belong to the Union what would be the purpose of belonging?

Mr. Nelson: I suppose I should object to this, it is a situation that cannot exist under all the proof in this case.

Mr. Dahling: Do you mean that the Foreman's Association of America may never be taken over by the CIO?

Mr. Nelson: I think that is the fact, and so does he.

Mr. Dahling: Do you mean that history will not repeat itself?

Mr. Nelson: Do you mean the taking over of an independent union by the CIO? Not in this case.

Mr. Dahling: As a matter of fact, if the CIO attempted to take over your Union you would fight it, I suppose?

The Witness: I would fight it. No, I do not think that would be the thing to do at all. There are a
818 difference in the two.

Q. (By Mr. Dahling): If the CIO organizers got together and got some of your members to petition for a union that would be affiliated with the CIO, you would fight that movement?

A. Absolutely, I see no need for it and I would fight it.

Q. And if you lost your fight and the CIO Union was established what would you do?

A. I don't say that I would join because of that but if I thought that particular thing wasn't right I wouldn't belong to it.

Q. Do you think it is right?

A. Well, there is no need for CIO to come in our picture. We are doing them no harm and we do not need them.

Q. I am putting up a situation to you. Suppose the CIO sends in organizers into the Packard plant and gets enough foremen at the Packard plant to ask for an election for representation and the election is held and it is voted that the CIO is going to represent the foremen at Packard, would you then join this CIO unit?

A. I might and I might quit.

Q. Well, you don't know, is that it?

A. That is it, I don't know.

819 Q. You are uncertain as to what you would do?

A. If I didn't think it was satisfactory I would quit. Nobody can make me do what I don't want to.

Q. I don't think they could make you. You are exactly right in making that statement. What are your reasons now, if any, why you would not join that unit?

A. I have nothing against the CIO as a CIO but that is their own outfit and I do not see where we come into the picture with the CIO, and that is why.

Q. Do you think it would be improper for foremen to belong to the CIO Union of workers?

Mr. Nelson: It obviously would now, because it is forbidden.

The Witness: It is the law now and what can you do?

Mr. Dahling: I move, Mr. Examiner, that the last statement of counsel be stricken from the record.

Mr. Nelson: I think I ought to object to it. Obviously we have a contract with the CIO and that forbids it and we have the Constitution of the Foreman's Association of America and that forbids it. It is a supposition which is violently contrary to the state of facts. It is not a fair question of the witness, as to what he might do, if the world was entirely different. It seems beyond the scope of this inquiry.

Mr. Dahling: What happened to the provisions of
820 the CIO contract with respect to plant protection men? Did the CIO live up to that contract?

Mr. Nelson: Whether they took it in or didn't, if they afterwards adjusted their operations to facts and got agreements on it I see no objection to it.

Mr. Dahling: As a matter of fact, they agreed not to take plant protection men and then they did take them. That is a matter of record with the National Labor Board, isn't it? The position was taken by management that it was a violation of their contract.

Mr. Nelson: And the Company agreed to it. All three parties were in agreement; so what?

Mr. Dahling: So the Union breached their contract.

Mr. Nelson: I do not take that as a breach of contract, that agreement, in my law, I do not know about yours.

Trial Examiner Jaffee: That will be all, gentlemen. The next question, please.

Mr. Dahling: It has been so long since I have asked the question that I have forgotten it and I do not know whether it has been answered or not. I will state it under another question.

(Q. (By Mr. Dahling): Do you think it would be proper—

Mr. Nelson: We have not had an answer to the last question because I objected to it.

821 Trial Examiner Jaffee: Will you ask another question, please?

Q. (By Mr. Dahling): Mr. Turnbull, do you think it would be proper for a foreman to become a member of a CIO Union in which the other members were workers over whom he had the power to recommend discharge, reclassification and discipline?

A. I would say no.

Q. You do not agree with Mr. Keys, then?

Mr. Nelson: I don't know about that. You have asked him a question and he ought not be asked to characterize other witness' testimony.

Trial Examiner Jaffee: I believe that is so, unless you point out the specific testimony to which you have reference.

Mr. Dahling: All right, I will withdraw the question.

Trial Examiner Jaffee: All right.

Q. (By Mr. Dahling): Why, in your opinion, shouldn't foremen be members of such a union?

A. Because it is possible for them to have a union of their own and I do not see, when it is possible to have a union of your own, why we should go into something that might cause a conflict. There is no need for it now, and we should have a union of our own and they should

822 have their union and that is all we want.

Q. What conflict might arise?

A. Well, you people have been putting out the objection that there might be a conflict. We do not believe that there will be any conflicts.

Mr. Dahling: I ask that the last answer be stricken as not responsive.

Trial Examiner Jaffee: I think it is. You are going by the conflict that the Company alleges?

The Witness: Yes.

Mr. Dahling: As I understand your ruling then, the answer may stay?

Trial Examiner Jaffee: Yes.

Q. (By Mr. Dahling): And that is the only conflict you think that might arise?

Mr. Nelson: He did not say that he thought a conflict

might arise. He said that the Company suggested a conflict might arise under the circumstances that you stated.

Mr. Dahling: I thought the witness said because of possible conflict—

Trial Examiner Jaffee (Interposing): He added to that.

Mr. Dahling: He said the only possible conflict about which the Company might do something—I don't
823 know what he said—I am asking him now whether that is the only conflict which might arise, if the supervisors were members of the same union as workers whom they supervised. And if he doesn't think that there are any he can answer so.

Trial Examiner Jaffee: All right, go ahead.

The Witness: Well, that is the $64.00 one.

Mr. Dahling: May I have the answer read, please?

Trial Examiner Jaffee: Read the answer.

(The answer was read.)

Mr. Nelson: The question briefly is, is there a possibility of other conflicts?

The Witness: It has worked, evidently, with other unions and if it is handled right I don't see why it couldn't work in any case. If they had to, though, I wouldn't advise it. I would sooner see us independent.

Q. (By Mr. Dahling): Then you do not have in mind any other conflicts which might arise?

A. I feel this way, on any conflict, if you sit down around a table and try to iron it out, it doesn't become a conflict. It can be done in this case as well as any other case. The round table is the place for that and it does not make any difference about the nature of the conflict, Mr. Dahling.

Q. Were you an officer at Packards at the time of
824 the strike in April of this year?

A. Yes.

Q. What was your office at that time?

A. Secretary-treasurer.

Q. And it is the same office you held for a number of years, isn't it?

A. Yes.

Q. Did you attend the strike meeting that was called?

A. Yes.

Q. Did you favor the strike?

A. Yes.

Q. Did you picket the gates at the time of the strike?

A. I was too busy to picket the gate. I did drive around once or twice in a car.

Q. You weren't busy working on your job at Packards?

A. I was working to see the thing over as quickly as possible.

Q. Trying to stop the strike?

A. Trying to get us back to work and get a settlement as quickly as possible.

Q. Were you trying to influence the members of the Union not to continue the strike?

A. No. I was trying to get the Company to give in to us to get back to work, so that we could work in harmony.

Q. And you were unsuccessful?

825 A. I don't say so. We got certain results. The War Labor Board Panel was one result that came from that strike.

Q. The War Labor Board Panel was a result, one of the things you wanted to get at the time of the strike, wasn't it?

A. We had to have some place to go to get redress. We asked the Company what they offered and they said, "Nothing."

Q. So you struck for the purpose of getting the War Labor Board to issue some sort of order or directive?

A. No, we struck for recognition.

Q. And that is what you wanted, that your Union be recognized?

A. Absolutely.

Q. And that was the purpose of the strike?

A. Yes.

Q. And you say you only drove around a couple of times?

A. Something like that, once or twice more.

Q. When you drove around were there pickets at the gates of the Packard plant?

A. No, we didn't need pickets there.

Q. What do you mean when you say "you didn't need pickets there"?

A. Our men rolled out and we didn't need a picket line.

826 Q. In other words, you were all out?

A. Yes.

Q. Didn't you have men standing around the gates?

A. Yes.

Q. Why were they standing there?

A. Well, you had other men there that were liable to take over our foremen's jobs. We didn't want them to do that and if it were possible, we didn't want somebody else taking our jobs.

Q. How would you prevent them from taking your jobs?

A. We talked to them and some of them—even the superintendents were in sympathy with us and came out with us.

Q. When you talked with them, what did you say?

A. As long as they handled their jobs it was all right, but the moment they did the foremen's jobs, they were in the wrong and that there might be trouble, and they gave us their assurance that they would not do it.

Q. Didn't you tell them that if they did that job it would be too bad for them?

A. We didn't have need to do that, they knew that.

Q. Did you phone the wives of—

A. (Interposing): No, Mr. Dahling. You made reference to that previously and I will object to it now. We never did anything like that—

827 Q. Don't answer the question before I ask it. Is that an indication that you knew that the question referred to telephone calls?

The Witness: I heard Mr. Donovan accuse Mr. Keys of the same thing and I resented it then and I do now.

Q. I am asking you whether you called any of the superintendents' wives and told them that they better keep their husbands home?

A. Are you asking me did "we" or did I do that?

Q. Do you know about it being done?

A. No, I do not.

Mr. Nelson: I think your question is misleading and I think he is entitled to answer that as to himself.

Mr. Dahling: I do not want to be unfair in my questioning and about this. If he doesn't know about it he can answer "no."

The Witness: I didn't know and I didn't do any such thing as that to anybody.

Q. (By Mr. Dahling): Did you go down to Washington at the time Mr. Keys was called before the War Labor Board?

A. Yes.

Q. And you were present at that time?

A. Yes.

Q. And you heard the statements that were made by the members of the Army and Navy down there?

828 A. Yes.

Q. I believe that the record of that proceeding appears in one of your magazines, doesn't it?

A. I don't know about that but I imagine there is right now.

Mr. Nelson: While you are at it, Mr. Dahling, we would like the whole statement, the whole proceeding instead of the portion, the one portion Mr. Donovan read,—we would like to have the whole portion read in this proceeding.

Mr. Dahling: It is quite agreeable to me to put the entire record in. I think it might be quite illuminating to the Board.

Mr. Nelson: All of it or none.

Mr. Dahling: It might be enlightening to the Board. What I have in mind, Mr. Examiner, is the conversation that took place between Mr. Davis and the War Labor Board and Mr. Keys and his representatives at the time of the strikes in May of this year. The Union officials were ordered to Washington to show cause why they did not terminate the strikes. If counsel has no objection, I would like to have that report—I believe it is in a copy of your magazine which I have not here right now with me.

Mr. Nelson: You can produce it. I am dissatisfied
829 with a portion of it being read. I want it perfectly clear that the Company was not asked to do anything and that no relief was granted the foremen.

Mr. Dahling: I am quite sure that Mr. Donovan did not intend to mislead anyone by reading part of it.

Trial Examiner Jaffee: All right, gentlemen, let's go on.

Mr. Dahling: All right, let us have all of it in then.

Trial Examiner Jaffee: Let's go on.

Mr. Dahling: I wonder, Mr. Examiner, if, before starting in on another line of questioning it would be possible to adjourn at this time. I am making that request because it is necessary for me to see several persons this afternoon and the purpose of the meeting is to determine—the meeting may have something to do with the length of this particular proceeding. I cannot promise anything but it might arrive at a certain result and the hearing may be shortened. I cannot reach these people or be with them long enough unless we adjourn this proceeding now.

Mr. Nelson: Mr. Examiner, I may, for the benefit of Mr. Dahling and the Examiner and the attorney for the Board, say that we plan to call just one more witness. I would say shorter than any other. There were two or three
830 questions that I would like to ask Mr. Keys. I wanted to give counsel notice, in view of the holiday recess, so that he might prepare himself and not be taken by surprise and cause some further delay.

Trial Examiner Jaffee: It is particularly gratifying to me to see that counsel are trying to shorten this hearing. I might say that I had two things in mind for next week, one of which was to lengthen the hearing day slightly in order to at least begin to comply with the usual practice of trial examiners, which is, to sit six hours per day, three in the morning and three in the afternoon. The second point is the fact that I think we have all been rather negligent in the starting of the hearing. We have been negligent in starting the hearings on time and observing the announced periods of recess. I do not want to blame counsel for that because I have been just as guilty, myself. I will take part of the blame but not all of it. I think

next week, if and when I say 9:30 in the morning, we come in at 9:30 and start at 9:30 and if I say a five- or ten-minute recess, we see to it that we come back on time and we will get along a little faster. We will not sit tomorrow, as I have indicated to you informally off the record, and next Monday is Christmas, so we will not, obviously, sit on that day. Unless counsel care to add something
831 further it is my intention to say Merry Christmas to you and recess until next Tuesday.

Mr. Dahling: I would like to say this, Mr. Examiner, I am not committing myself at this time, but frankly, I may be forced to ask for some little time next week. However, I do not want Mr. Nelson, by his statement, to leave that uncovered. Further, you spoke of increasing the time of the hearing. Frankly, it is difficult, even with the time we now have, to be prepared on these things. I do not want to go back and restate the situation we find ourselves in in this case, but I hardly think it is fair to the Respondent, not to give the Respondent ample time and opportunity.

Trial Examiner Jaffee: I think the Respondent has had ample time—I do not like the word Respondent—I think the Company has had ample time and what the Board considers legal time and what I think is sufficient time.

Mr. Dahling: I am sorry to be in complete disagreement with the Board.

Trial Examiner Jaffee: A six-hour day is the normal length of time in which we hold hearings. I have had dozens of cases in which I sat substantially longer—for substantially longer periods of time, and in most of them counsel have cooperated and were quite anxious to sit those long periods. I indicated in an earlier statement that I thought I was being lax and liberal in per-
832 mitting some of the testimony that has gone in, which I personally considered rather remote. I am still of that opinion. I appreciate that counsel cannot commit themselves in advance as to what they will or will not do or formally cannot do, the same, of course, applies to the Examiner. I am not committing myself now as to what I will or will not do next week, that depends in part on what the developments are.

Mr. Nelson: I want counsel to be informed that following the conclusion of cross-examination of Mr. Turnbull, the present witness, I would think that the Petitioner's case could be put in in approximately one hour. I cannot, of course, estimate anything in connection with cross-examination of our witnesses. I think perhaps that should afford the Examiner, counsel for the Board and for the Company, some information as to what they should be prepared to do.

Trial Examiner Jaffee: Well, I would say on the basis of your statement, that I would expect the Company to be ready to go ahead at the conclusion of the testimony of the Petitioner, unless there is some particular surprise in the rest of your testimony.

Mr. Karasick: I would like to state only this: I have spoken to counsel for the respective parties prior to this time with the idea in mind of seeing whether a
833 certain amount of material, which I thought, at least, would not be in dispute or in disagreement, and about which there could be some stipulation, but the parties have felt that they were unwilling to do that with respect to the matters discussed. As we go along other matters may arise which they will endeavor to agree upon, and save hearing time if they possibly can.

Mr. Dahling: Well, Mr. Examiner, before we adjourn may I on behalf of the Company wish to you and to the members of the Petitioner and the court reporter, a very Merry Christmas.

Mr. Nelson: The Petitioner reciprocates the desire for a Merry Season.

Trial Examiner Jaffee: And I trust the same spirit will prevail when we convene next Tuesday morning at 9:30 A. M. The hearing is adjourned.

(Whereupon, at 5:00 o'clock P. M., Friday, December 22, 1944, the hearing was adjourned until Tuesday, December 26, 1944, at 9:30 o'clock A. M.)

834 Room 737, Federal Building,
Detroit, Michigan,
Tuesday, December 26, 1944.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 A. M.

Before:

Samuel H. Jaffee, Trial Examiner.

836 PROCEEDINGS.

Trial Examiner Jaffee: Are we ready to proceed, gentlemen? The cross-examination of Mr. Turnbull was evidently not completed on Friday, last.

Mr. Dahling: It had not, Mr. Examiner. I presume we may proceed now?

Trial Examiner Jaffee: Yes, please.

ROBERT F. TURNBULL

resumed the stand, was examined and testified further as follows:

Cross-Examination (Continued).

Q. (By Mr. Dahling): Mr. Turnbull, in the event that you have workers in your department that you feel are competent and you desire to improve their condition, what do you do? Can you recommend their change in classification?

A. We take any change of classification on a seniority basis, on any change like that.

Q. Well, that is not quite answering my question. May I put it this way: Do you mean that you cannot upgrade a man on ability and that it depends entirely upon his length of service?

A. Yes. Except we have what we call a utility man. That is a man that, we will say, is an all-around man in a group. Now, if we need a man such as that, the general rule is that he has to be taken on seniority unless

837 you have got a case, for instance, where a man is exceptionally slow, or something like that, or has

some bad habit. Then you may manage to get the steward to agree with you along that line.

Q. I take it then that it is very difficult for you to upgrade these men on other than a seniority basis?

A. Yes, sir.

Q. That is opposed by the UAW Union?

A. That is correct.

Q. Take the case of the demotion of a man, if you desire to demote a man do you have the same difficulty there?

A. We run into the same difficulty and we have to put out a special query. That query is signed by the man himself, by the steward and by the foreman of the line.

Q. Does the matter of seniority enter into that, too?

A. Yes.

Q. In other words, you are supposed to demote the man who has the least seniority?

A. Yes, sir.

Q. And if you attempt to demote a man who has greater seniority than a man who is to remain on a like job, will you run into difficulty with the Union?

A. Oh, yes.

Q. What difficulty have you had, we will say, in demoting a man who has had greater seniority than others
838 who will remain on the same job?

A. I do not remember having ever run into that difficulty at all. I don't ever remember having ever run into that difficulty at all. I don't ever remember having demoted a man.

Q. You don't remember demoting a man?

A. No.

Q. Do you know what the general experience of your brother foremen has been in that connection?

A. We would run into quite a difficulty, Mr. Dahling, I would say, however, that it is very, very seldom that you see that happen, except if it came to such a thing as a cutback or a layoff, then you may manage, if there is a difference of opinion on the ability of a person. You may manage then, to get the steward to agree, but it is not a usual thing at all to cut back.

Q. It is difficult to cut a man back except on a strict seniority basis?

A. Yes.

Q. And how does that arrangement work out in connection with transfers?

A. A transfer from one department to another?

Q. Yes.

A. That would be done on the same basis, on a seniority basis, the youngest man would be the one transferred.

839 Q. I believe you stated that in connection with discharges, you also ran into the same difficulty with the CIO Union?

A. Yes.

Q. Now, of course, in connection with your work you have other departments and divisions of the Company which give you assistance, do you not?

A. Yes, all parts come from other divisions to us.

Q. The parts do, but I mean in connection with injuries, you would not attempt to administer first aid, for instance, you have a hospital for that?

A. That's right.

Q. And the employment office takes care of the hiring of employees?

A. Yes.

Q. The plant layout men take care of laying out the work and the processing in the various departments of the plant, is that correct?

A. Yes.

Q. You also have a master mechanic who assists you with troubles that arise in your department?

A. Yes.

Q. And also, as you have testified, the Industrial Relations Department, in connection with some of your labor problems and problems of your workers?

A. Yes.

840 Q. You can, of course, call upon any of those departments for assistance?

A. Yes.

Q. I do not recall whether you testified that you do or do not have a clerk to assist you in your work?

A. We have a clerk in there; she doesn't do any typing for me, but she comes under the time office people. There is one chief clerk in the division and he has charge of all

the girls, but one of the girls is in the same office I am and she makes up any queries, and such things as that.

Q. That is supposed to be a part of her job?

A. Yes.

Q. And to that extent she is, of course, under your control?

A. Yes.

Q. You give her directions as to these reports and bookkeeping matters?

A. I don't have anything to do with that. I sign the time report every night; that's all I have to do with the time.

Q. You would make out your requisitions—or who would make out your requisitions for additional help if you needed additional help?

A. I make those out and submit them to the superintendent, who in turn submits them to the foreman.

841 Q. Who types those out for you?

A. It is a special form, Mr. Dahling, that we use for that, and we just write it in in pencil.

Q. From what source are the assistant foremen recruited, Mr. Turnbull?

A. Generally from the rank and file.

Q. It is practically without exception in Packard's that they come from the rank and file, is that not true?

A. A great number of them, I will say that. There are exceptional cases sometimes, but most of them are from the rank and file.

Q. But to your experience, that is a general thing?

A. Yes.

Q. Where are the foremen recruited from?

A. Pretty much the same thing.

Q. You would answer that question same as you did the previous question, you recruit them from the rank and file?

A. Yes.

Q. Is the same thing true with respect to the general foremen?

A. As far as I know.

Q. Yes, I am only asking for your knowledge, Mr. Turnbull.

A. I would say they are.

Q. It would be only the exceptional cases where they would not be recruited from the ranks of the foremen?

842 A. Yes.

Q. Who recommends the advancement of these men, we will say from assistant foreman to a foreman?

A. Well, the only ones I ever had anything to do with in the way of recommending was one time when we were arguing about the rates of pay and they and the manager told me to put it in the change of classification to him and he would see what he could do. So I wrote them up and submitted them to the superintendent and he signed that form and sent it on to the division manager and he made the change.

Q. Promoted from assistant foreman to a foreman, is that it?

A. Yes, I couldn't promote one myself.

Q. But you would have to ask for approval, and you could recommend, however?

A. Oh, yes. Of course, we have a certain set number of foremen and assistant foremen. If they decide they want to put on extra ones, then they would tell me to put this man's name in, and I would put it in.

Q. You do not think there is anything inconsistent or wrong with the division manager passing on these questions of promotions, do you?

A. No, that's his job.

843 Q. That is, he has an entire division?

A. Yes.

Q. And he has to consider all parts of the division, as well as your department?

A. Yes.

Q. And it would be very logical that he should pass on these questions of promotions?

A. Yes, the same as on demotions. We demoted three just a month ago and that was decided—the superintendent and division manager, they sat in on that conference and I was told to tell these men they would have to be dropped to leaders. I had nothing to say in that other than that.

Q. Who decided that they should be demoted?

A. It was decided between the superintendent and the division manager.

Q. Was the matter discussed with you at all?

A. No.

Q. You knew nothing about it until the time of the demotion?

A. That's correct.

Q. What were the names of the men demoted?

A. George Cikity and Charles Forsythe.

844 Q. And when did this occur, did you say?

A. Just about the beginning of December that they went on the hourly rate, the beginning of December.

Q. They were assistant foremen?

A. Yes, there were three altogether, there was a man, Herman Neuman.

Q. What was the reason for these demotions?

A. We cut back on the production from a certain number of engines and we cut back in the help about 200 and I think we cut back 200 people all told. The consequence was, I suppose, that the Company felt that they did not need so many of supervision and they cut them back.

Q. What do you think about it? Do you think that the Company needed that much supervision after cutting off 200 people?

A. The men were doing the same job. They were cut to leaders but still had the same job as before, with the exception of one man whom we are going to transfer. He is going to move to another department. The other two were on the same job.

Q. Is it your position, Mr. Turnbull, that if you cut 200 workers out of a department that you should still keep the same number of foremen?

A. No, it doesn't seem feasible to me. We did not argue on it, because it was the logical thing to do.

845 Q. Wouldn't you, as a matter of fact, in a situation of that character, recommend to the Company that they cut back the number of assistant foremen?

A. I? No, no. I wouldn't recommend anybody to be cut back at any time. It is not my job to do it.

Q. You don't think that is your job?

A. No.

Q. If you have too many men for the work in your department you would not consider suggesting to your superiors that the work could be done with less men?

A. Yes, yes, on that basis.

Q. Don't you think the same thing applies to the number of foremen?

A. Not with the foremen the way they are at the present time. They are still in charge of the same group. It is a little smaller but the point is that when we cut the foremen back like that he is cut back to a leader and if he gives orders then the Union gets on him right away. He mustn't give orders and we have to take another foreman over him if an order is needed.

Q. If you cut down the number of people you have working for you, you do not need as many foremen to supervise, do you?

A. Well, you still have to feed the line the same way. It is difficult if you cut down the number of pro-
846 duction and the number of workers. Every opera still comes through the same but maybe on a shorter basis. The job is still there for supervision.

Q. Do you need supervisors for that job?

A. They are doing that job but not getting paid for it.

Q. Do you mean that they have been demoted to leaders and are not getting paid as assistant foremen?

A. That is right.

Q. Were there leaders there before the men were demoted?

A. Yes.

Q. What happened to the leaders?

A. They are still on the line.

Q. So that when you cut back the assistant foremen to leaders you have more leaders than you had before?

A. Yes, one more leader.

Q. Is the work being done as efficiently as before?

A. Yes.

Q. There is no change in the efficiency?

A. Yes.

Q. Then in your opinion, if you cut down the department fifty per cent, you will still need the same number of supervisors?

A. No.

Q. In case they did that would you make any recommendations?

847 A. Well, I wouldn't. It doesn't come as far as me, Mr. Dahling. When we come in there is a list of layoffs there with the number of people to lay off and the workers that are cut back, and also there is a list of supervision. That is decided by the superintendent and the division manager.

Q. You have mentioned this one case; does your superintendent ever discuss with you the matter of your supervisors?

A. Well, not to any extent, no.

Q. When you say "not to any extent," does he ever discuss it with you?

A. Well, I have the one man named Herman Neuman.

Q. Does he ever discuss these matters with you?

A. No, only this one man, he did discuss this with me. He wanted to take him off and claimed he wasn't capable and that he was getting old and felt he should be taken off supervision. So, he took him off and that is all there was to it.

Q. But he discussed that with you?

A. Yes, as a matter of fact, I discussed it with him. He wanted me to take him off and I told him that the man had been there for a number of years and I knew that he would like to go off, as far as he was concerned. I didn't like to hurt the man's feelings. I told him that if he left

848 him on for a week or two maybe we could manage to get him transferred to the job where he came from in the Experimental Department and where he wanted to go back to. I wasn't successful and the man was taken off the job and is off the job at the present time.

Q. You say you never discussed that before with the superintendent, that is, this man's capabilities and that sort of thing?

A. No.

Q. Where does the superintendent get his information?

A. He told me that Mr. Bird was at him to get him off, and that is all I knew about it. As far as I was concerned, I had no complaints from the foreman on the line about this man.

Q. Who is Mr. Bird?

A. Mr. Bird is in charge of the Aircraft Division on days, he is the head man on days.

Q. Now, Mr. Turnbull, I believe you stated that one of the principles of Unionism was this matter of seniority, did you not?

A. Yes.

Q. Will you tell us just how that works, or better still, how it would work in case the foremen were given collective bargaining?

A. Well, we have studied it quite a bit at our Executive Board meetings and tried to work out what we figured would be something on a fair basis to work from. There are many points that come into the picture. Ability has got to enter into it, ability to do a job and the merits of the man would have to be considered, and the length of service as a foreman would be considered, and perhaps the length of service with the Company as a worker should be considered. We have tried to decide it along those lines and so far we have not come to anything that really is what we would say exactly satisfactory. I think the main thing on it is to take them on their seniority as a foreman, if it is possible at all. We have managed in most of these cutbacks—the superintendent or manager have managed to work along that line and we have not had many complaints, though we have lost quite a few foremen just lately. They seemed to work along that line and it worked fairly good.

849

Q. When you say seniority, that means length of service, doesn't it?

A. Yes.

Q. And that is something that is easily determined?

A. Yes.

Q. Whether a man had a job five or ten years?

A. Yes.

Q. And when you come to the question of ability,
850 who is going to determine that?

A. Well, the only way that it can be determined, in my opinion, Mr. Dahling, to get something agreeable, is to sit around a table and discuss that. It may be, for instance, that the Association thinks that one man should have it and maybe the Company will think the other man. If we had a grievance committee there and we sat down on an unbiased basis and talked about it in fairness, I think it would work out satisfactory. I have been consulted by quite a few foremen on cases like that and when I have analyzed the case right out and perhaps talked it over with one of our supervisors or superiors, we always managed to come to an agreement, so far.

Q. Of course, there is a possibility that the Union might not agree with management, is there not?

A. Yes.

Q. Then what would be your idea of what should be done?

A. Well, I suppose we would have to go fifty-fifty with them if we expect them to go fifty-fifty with us.

Q. And say that you came to an empasse and the Union took the position that "X" was the man who should be promoted or demoted and the Company said, "No, we cannot agree with it, 'Y' is the fellow we want"—

A. Yes.

Q. —where do we go from there?

851 A. Well, now, you could do it on the basis, the same exact basis as what the CIO does. They have managed it. We have had those cases come up and we have always managed to come to an agreement on it.

Q. Supposing you do not come to an agreement, what is the next step?

A. Well, sometimes you have to lose. If it was a very bad case, then it might develop into something more serious.

Q. When you say it might develop into something more serious, do you mean a strike?

A. If such a thing occurred, there might be a danger there. Then, we have to consider it this way, Mr. Dahling, we don't in Packard's make a flagrant example of it.

Q. Mr. Turnbull, I am asking you as to what would happen in a specific case where you cannot agree.

Mr. Nelson: You are assuming the flagrant case?

Mr. Dahling: I do not know what a flagrant case would be. It would possibly be flagrant in the viewpoint of the Union if they did not agree with management in any way.

Q. (By Mr. Dahling): I am assuming top management does not agree with the Union. Top management says "Y" is a man of leading ability, leadership and all those other things that go to make up a good foreman. That is the man that we intend to put in this job. The Union
852 says no, "X" is the man, he has been here four years longer than "Y" and in our opinion he has this ability, and so you are in disagreement. What is the solution of that disagreement?

A. Well, you can generally come to some compromise, you can sit down to a table and talk it out.

Q. But you have gotten beyond the point of compromise when you come to the situation I am giving you now. It is a flat disagreement between the Union and the Company?

A. Well, there could be the danger of a strike there.

Q. Yes, and strikes have been caused because of that, have they not?

A. I suppose so, yes.

Q. You do not know of any?

A. Not now.

Q. On the part of the CIO, do you know of any strikes because of that?

A. No.

Q. You mean not in Packard's?

A. No.

Q. Do you know of any other cases?

A. Well, just as the case of Paper Storage, not in any others, no.

Q. The fact that you disagreed with top management as to who could be promoted, could lead to a strike?

A. It is less likely with collective bargaining.

853 Q. I am not asking you that question, Mr. Turnbull. There would be a possibility of a strike, you would get to an impasse and the Company would insist upon

promoting "Y" while the Union insisted that "X" should be promoted, and it might develop in a strike?

Trial Examiner Jaffee: He has already answered that. Why go over it again?

Mr. Dahling: I just wanted to be sure that he has answered it.

Trial Examiner Jaffee: Of course, he has.

Mr. Dahling: Then I am satisfied.

Q. (By Mr. Dahling): In short, then, Mr. Turnbull, as I get your testimony, you would figure that it was what the Union wanted and not what top management wanted that would control cases of that sort?

Mr. Nelson: I do not think he so answered it. I think he said the most they can do is reduce the number of possible disagreements, which I think is a perfectly honest answer.

Mr. Dahling: I would like an answer to that question, unless the Examiner rules it should not be answered.

Trial Examiner Jaffee: Is there an objection to it?

Mr. Nelson: I think he has already answered the question. I object accordingly, Mr. Examiner.

Trial Examiner Jaffee: I do not think he has answered that question. However, I will exclude it because I think it is objectionable on other grounds.

854

Q. (By Mr. Dahling): Now, we have been dealing with the question of promotions. The same situation would exist in cases of demotions, also, I take it?

A. Yes, only in the reverse order.

Q. And also in cases of transfers or discharges?

A. Yes.

Q. Mr. Turnbull, as a matter of fact, there are many different types of work in an automobile company, are there not?

A. Yes.

Q. And the foreman who may be in charge of one department could not supervise the work in another department?

A. That is correct.

Q. Some of the foremen are highly skilled mechanics, are they not?

A. Yes.

Q. Some of your foremen, such as the foreman of the

sweepers, have no mechanical ability at all, is that not correct?

A. I do not think they have a foreman sweeper, even in the plant.

Q. Well, we will say foremen in charge of non-production departments, such as supplies, and that sort of thing?

855 A. Oh, yes, yes, there is a difference.

Q. You happen to be a skilled mechanic, Mr. Turnbull, do you not?

A. Yes, sir.

Q. And consequently, you would be in a position to be a foreman over a department which had workers in it who do that type of work, you are capable of doing it?

A. That is right.

Q. And there are foremen whom you know who would not be capable of supervising that work, because of their lack of knowledge of that work?

A. Yes.

Q. So it is not a question of transferring men indiscriminately in departments?

A. Oh, no, no, you couldn't do that.

Mr. Dahling: May we have about sixty seconds for a little conference here?

Trial Examiner Jaffee: Yes, you may.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Q. (By Mr. Dahling): Mr. Turnbull, we were discussing at the last session this matter of Union principles, and your loyalty to your Union as a Union man. You believe in those principles, do you not?

A. Yes.

856 Q. Were you ever a member of the UAW?

A. Yes.

Q. You were loyal to the UAW at that time, at the time you were a member, were you not?

A. Yes.

Q. Do you still feel any loyalty to that Union at the present time?

A. No, just a respect for their Union. I have no loyalty to it because I have a withdrawal card.

Q. Because you are not a member of that Union any more?

A. That is correct.

Q. You are in sympathy in the aims of the UAW, that is, the Union aims?

A. With its principles, yes.

Q. Do you, as a foreman, have any loyalty to the Company?

A. Oh, yes.

Q. Do you feel as a foreman that you really should be loyal to the Company?

A. Absolutely.

Q. Where, as between the Company and the Union, does your greatest loyalty lie?

Trial Examiner Jaffee: I am going to exclude that question unless you make it specific. I think the question is so broad that any answer would be simply a vacuum without some specificity.

857 Q. (By Mr. Dahling): If the Foreman's Association of America decided to have a strike and you felt that the strike was unjustified, what would you do?

A. I would tell them so very quickly.

Q. Regardless of your telling them that, if the majority voted to strike, what would you do?

A. I would go with the majority.

Q. You would feel there that your loyalty to the Union would be greater than your loyalty to the Company?

Mr. Nelson: I do not think that is a proper question.

Trial Examiner Jaffee: Nor do I.

Q. (By Mr. Dahling): Mr. Turnbull, if the UAW decided to come in and organize the foremen at Packard's and secured a certain number of members from the ranks of foremen at that Company, you would remain loyal to the FAA, I take it?

A. Yes.

Q. Would you fight the organization of a rival union among the foremen?

A. Yes.

Q. When you say you would fight it, what would you do?

A. I would do exactly the same as what was done during

the factional fight of the CIO. I stayed with one side and I battled it out on the floor at the meetings.

Q. I suppose in cases of that sort a great deal of
858 discussion goes on in the plant itself when you have a fight of that sort?

A. Well, there was in the days of the CIO, but we don't run into that sort of thing now.

Q. You do not run into it with the CIO?

A. I mean, with the Foreman's Association.

Q. Do you take the position, however, that it is impossible for some other organization to attempt to organize the foremen?

Mr. Karasick: Mr. Examiner, I would like to note an objection on the record at this point. I have refrained from objecting prior to this time because I hesitate in any way to interfere with the latitude of counsel's examination. But you will note the questions have been leading up to this point, all dealing with the sheerest forms of speculation. I do not think it is helpful to the Board and I think the Board has a realistic knowledge of labor relations and it would not help them to be told what a particular witness would do in a particular situation. Anything might happen. The sun may not rise tomorrow, but we are not interested in that here. We are interested in a specific question at the Packard Company. The question of possibilities and probabilities when they reach the realm of speculation, are of no help nor aid to the Board in this proceeding.

859 Trial Examiner Jaffee: Of course, it is very easy to apply the adjective speculation to something, and I suppose the short answer to your remarks, Mr. Karasick, is the fact that we are interested in the future as well as the past and present. I assume, among other things, we are interested in industrial peace from now on. I agree there is an area somewhere that when a matter becomes so speculative it is unwise to receive it for several reasons. It is hard to draw the line. If I am in doubt, I usually let it come in, and this is one of those cases.

Mr. Karasick: I would like to call your attention to the fact that this last question asks if there is a possibility for

the Foreman's Association of America to have factionalism in its midst. Everyone knows the answer to that, it is obvious.

Trial Examiner Jaffee: The short answer is that sometimes you have to ask an obvious question, or a more or less obvious question, as the basis for the next question. He may answer.

Mr. Dahling: May we have the last answer read?

Trial Examiner Jaffee: Will you read the answer, please?

(Question read.)

860 Q. (By Mr. Dahling) We may have an answer to that question, then?

Trial Examiner Jaffee: Yes.

The Witness: Would you repeat the question for me, please?

Trial Examiner Jaffee: Read the question.

(Question read.)

Mr. Nelson: May I make an observation? I have not entered or made an objection. I am well aware of the speculative nature of the question. How can the witness be expected to answer his question of factionalism and dual unionism unless he had the specific issues—

Trial Examiner Jaffee: Mr. Nelson, do you or do you not object? I do not wish to get into any discussion.

Mr. Nelson: I do.

Trial Examiner Jaffee: Objection is overruled. The witness may answer. Let's get ahead here. Suppose you ask the question again.

Mr. Dahling: The question was along this line: Whether in your opinion it would be impossible for some other outside Union organization or some of the members of the present Union to decide that they were going to form another union among the foremen.

The Witness: It wouldn't be impossible, but as long as we have a membership as we have, they have a

861 very poor chance of going far with the case.

Q. (By Mr. Dahling) Your answer is, then, that it would not be impossible, I take it?

A. Yes.

Q. And that has happened in connection with other so-called independent unions, hasn't it?

A. I don't know of any specific ones.

Q. Do you recall what happened to the Technical Employees Union at the Packard?

A. No, I don't know what happened there, Mr. Dahling.

Q. Well, we will say then, that an effort was made on behalf of the other foremen by the other foremen to set up a rival union to the FAA and one of your foremen, who was a member of the FAA, got into a discussion or argument and tried to influence one of the other foremen from joining the new union. What would you do about it?

A. Well, he would be called in one of the executive board meetings and charges preferred against him for practicing dual unionism and he would have to be dealt with according to the mandate of the executive board.

Q. I do not think you understood my question, Mr. Turnbull. I said that if a member of your Union, the Foreman's Association of America, tried to persuade one of his brother foremen from going into the rival union, what would you as a foreman, do if you knew about

862 it, or if it was called to your attention?

A. I would try to dissuade him myself.

Q. In other words, if there was a rival union started up among the foremen at Packard's, you would attempt to dissuade any of these foremen who are now members of the Foreman's Association of America from going into the rival union?

A. Yes.

Mr. Dahling: No further questions at this time.

Redirect Examination.

Q. (By Mr. Nelson) You have in Packard at the present time four grades of foremen which you desire to have included as the appropriate bargaining unit under the Order of the Board in this case?

A. Yes.

Q. General foremen, foremen, assistant foremen, and special assignment men?

A. Yes.

Q. You have referred to special assignment men. You referred to one that came into your department on some event the other day. What is a special assignment man?

A. A special assignment man—most of them have to do with the inspection end of the job. If we run into a difficulty with any part not coming right, the special assignment man will check on that job and trace it
863 through to the original operations where the trouble is involved. Then, he will check with the persons involved, the foreman or superintendent of the division and see that the job is rectified and the material starts to flow through correct for us to work with.

Q. As I understand your answer then, the man is specially qualified?

A. Yes.

Q. Either by experience or training or both, he is specially qualified?

A. Yes.

Q. Is he specially qualified in only one department or is he an over-all man, equipped to go into any department or any number of departments in the factory?

A. Most of them do go to any number of departments and follow the job. It may involve a part that is manufactured in three or four departments in the course of manufacture. He would go right to the source of the trouble.

Q. Wherever it led him he would follow?

A. Yes.

Q. Into however many departments?

A. Yes.

Q. And therefore, he would appear to be a more broadly specialized man than we will say the average foreman?

A. Yes.

864 Q. Or even the average general foreman?

A. Yes. He gets a picture of the over-all manufacture of the job.

Q. He would have, then, something beyond the general foreman's training and ability?

A. Yes, along a different line, however.

Q. Presumably, he is a man who is waiting somewhere to be drawn on—that is, he is in reserve waiting on trouble?

A. Yes.

Q. Unless he is actually engaged at it?

A. Yes.

Q. Do you have in mind how many of these men there are at the Packard factory—special assignment men?

A. I could not say that offhand.

Trial Examiner Jaffee: I would like to know before the hearing is over, how many employees are involved in the categories the Union desires and how many are in each.

Mr. Karasick: May I call the Examiner's attention to the fact that Board's Exhibit 21, report of the investigation, is a breakdown of each classification by numbers and gives the final total.

Mr. Nelson: This witness has fixed the number desired at something over 800, I believe. There is a statement in the record by this witness to the effect that there are 868 men.

865 Mr. Donovan: Special assignment men?

The Witness: No, over-all.

Mr. Nelson: The Examiner's question was not confined to special assignment men.

Mr. Donovan: I thought the Examiner asked him how many special assignment men were involved.

Mr. Nelson: The Examiner wanted to know how many men all told were included—

Mr. Karasick: Board's Exhibit 21 comes from the Company's payroll submitted for the check. That is the ultimate result of this report.

Mr. Donovan: Will you indulge me for a moment while I ask the Board's counsel a question off the record?

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Q. (By Mr. Nelson) Pursuing the inquiry about special-assignment men a little further, Mr. Turnbull, you have actually had experience with these men coming into your department?

A. Yes.

Q. In your department where you have been acting as a foreman?

A. Yes.

Q. Through whose office do you enlist the aid of
866 special assignment men? Who do you apply to when you want one?

A. There is generally one assigned to a department and you just go and get him right away if he is handy at all.

Q. Suppose he would be busy at that time?

A. Well, then, you would just check with the various foremen or people around and search for him to get him.

Q. In other words, you would exhaust the possibilities of getting a special assignment man for your department?

A. Yes.

Q. Assume that you could not get him, that he was ill, away or busy and could not be deflected from that work?

A. Then you would report—I would report it to the superintendent and let him take care of it from there on. He might assign some other man to take care of it or call one from another department.

Q. Or call somebody out of that department similarly qualified for the time being?

A. Yes.

Q. The superintendent could do that?

A. Yes.

Q. Could you do that?

A. No, I couldn't do that exactly. I might call—if I knew the division where the part was manufactured or coming from that was giving trouble—I might call
867 over to that department and ask them to send a man over to check on it for their own safety and they would send a special assignment man.

Q. Are these special assignment men recruited from the ranks of foremen, generally speaking?

A. Yes, they have the same rating of pay as foremen or general foremen.

Q. Now, which is it, the foremen or general foremen?

A. They have the two ratings. Some are general foremen and have that rating and others are foremen and have that rating, that is, I understand it is so.

Q. Who raises or selects them, whichever you want to call them, from the ranks of foremen to the special assignment designation? Who does that?

A. As far as I know, it is being done by the division

manager. I may be wrong on that because I certainly do not have anything to do with it. It is certainly above me and I imagine the division manager has the say in that.

Q. Who determines whether the special assignment man is to get a general foreman's pay and rank or a foreman's pay and rank?

A. I could not tell you that.

Q. But you do know that some rank as general foremen and some as foremen and that they are paid accordingly?

A. Yes.

868 Trial Examiner Jaffee: Do all general foremen get the same base pay?

The Witness: There are a few exceptions, such as the tool room. Of course, that is a high rate and I believe I know of two other exceptions, but that is about all. I know throughout the place—

Q. (By Mr. Nelson) But this general foreman—general foremen have the same rate of pay?

A. Yes.

Q. Is that true of foremen generally speaking?

A. Yes.

Q. And of assistant foremen?

A. Yes.

Q. And there are, I suppose, exceptions—a few exceptions to each of these statements?

A. Yes, a few isolated cases.

Q. Where there are some special circumstances or reasons?

A. Yes.

Q. As for instance the tool room?

A. Yes.

Q. What about the tool room? Is that a highly specialized type of knowledge and is there a highly specialized type of supervision required there?

A. It is not only that, but the skilled workers there have a higher rate of pay themselves. The production or

869 regular rank and file workers have a higher rate of pay than the ordinary production man on the line.

Q. In other words, tool makers are highly skilled people?

A. Yes.

Q. And supervision of them requires a proportionately higher skill?

A. Yes.

Q. The special assignment man, does he have any supervisory powers? That is, does he bring a crew with him that he supervises, or does he come to your department with power to supervise the men already there?

A. As a rule, he comes in by himself.

Q. Without a crew?

A. That is right.

Q. That is generally speaking?

A. Yes. Now, it may be that we have occasion to have a foreman absent for some reason, such as a vacation period, and one of those special assignment men will assume the foreman's duties over a certain line. Then again, on such a thing as a job not being run correctly, he may, as I say, go to another division and supervise that job or watch it until that job is running correct. If such a thing were to happen, the foreman wouldn't change that job. He would immediately report that he is in a position to a certain extent where his word is law—that is,
870 where it comes to a job being rectified.

Q. It is similar to a doctor's orders in cases of illness or difficulties?

A. Yes.

Q. Then he would have, to some extent, supervisory powers wherever he steps in to remedy a situation?

A. Yes.

Q. He could direct the workmen present to help him?

A. Yes, he would most likely go and get the foreman and direct the foreman.

Q. Give orders to the foreman in charge?

A. Yes, and discuss it with him.

Q. In sort of a coordinate or authority with the foreman, as you describe it?

A. Well, we call them more trouble shooters.

Q. But he can and does give directions?

A. Oh, yes.

Q. Then when the matter is remedied, is it true that he generally withdraws?

A. Yes.

Q. And returns to wherever he came from, or some other job?

A. That's correct.

Q. You have indicated that he not only comes in cases of difficulties of some kind, but he is sort of a supply
871 man if a foreman is sick or on vacation, or something of that kind?

A. Yes, he fills in.

Q. And according to your description, apparently he is a man so qualified that he can do that over a fairly wide range of duties and responsibilities?

A. Yes.

Q. Is that a correct description of it, Mr. Turnbull?

A. Yes.

Q. I do not want to put anything in your mind if I am wrong.

A. No, in any case, that is just about a correct picture of it.

Q. Suppose you give us a couple of the names of those men, so the Company can check your testimony.

A. Mr. Tom Pawlowski was taken off and put on special assignment work for awhile and now he is being put back as foreman, I think, in a shipping department, Department ND just recently. And we have another man, Al Poyser. Al fills in any place like that. I have seen him come in even on nights when my superintendent was away. He would come in and help me on anything like that when he is on special assignment. If we run into difficulty, he is one of the first men we call.

Q. Did he, on this occasion you have in mind, as-
872 sume duties of the superintendent in the absence of the superintendent?

A. Yes.

Q. He did?

A. I would say he did.

Q. As I understand it, he not only can come on down the line and act as assistant foreman, foreman or general foreman, but he can sometimes perform the duties of the superintendent?

A. Yes.

Q. And he has done so, to your knowledge?

A. Oh, yes.

Q. Do you have in mind the length of service of either of these men at Packard?

A. Yes, Tom Pawlowski has got ten years and I think Al Poyser came here in 1941. He came over right from the Rolls Royce plant at the start of the job and has worked with us ever since.

Q. Then he has a long service in the plant of the Rolls Royce but not so long at Packard?

A. That's right, but he is a specialist in that line of work. In fact, I am not quite sure, but there was some situation when he come over here, but he is one man even on strike, when we were on strike, we did not ask Poyser out because he had something to do with the British Air Corps.

873 Q. Among special assignment men themselves, do they have certain ranks and powers other than the two you have indicated, the ones that take the position of lower foremen and the ones taking the position of general foremen? Do they all rank alike, as far as you know?

A. As far as I know, there are just the two ranks.

Q. Of special assignment men?

A. Yes.

Q. I think you have said here that on occasions your recommendations with respect to other foremen have been overruled or disregarded, is that correct? Or was it with respect to maintenance and production workers in recent months?

A. It must have been production workers.

Q. Do you have in mind a couple of previous instances of that where your recommendation as general foreman has been disregarded?

A. In rank and file men, you mean where I have tried to recommend them for a change of job?

Q. A change of job or something that you recommended, as you thought, for the good of the production and of the Company where it has been disregarded?

A. Yes, we had a man, I remember, on the cam shaft line we wanted to put one man in charge of that line that we thought was more capable than the other man, but we weren't able to do it because of the steward. I can't
874 remember that man's name offhand. I just can't remember his name. It was Al something; he has quit now.

Q. How long ago was it?

A. Oh, three or four months ago.

Q. You say "We wanted" to do so-and-so. Whom do you mean?

A. Well, Mr. Nelson, I can't make those moves until I discuss it with the superintendent. In fact, I always make it a point of letting the superintendent know about those things.

Q. But you say "we", you meant yourself and the superintendent?

A. Yes.

Q. Now, I would like to have you tell us, Mr. Turnbull, something about the relations among the levels of foremen there. Let us take the assistant foreman who come in on your job, we will say. What are his contacts with the man immediately above the foreman? He comes on the job that day and what is the first thing he does?

A. The usual way, before we start out we will read the report that is left from the other shift.

Q. By "we" you mean the assistant foreman reads it too?

A. I first—the superintendent will read it and then I will and I will point out the various places where the men should read. There may be a note about one line
875 here and another note about another line down here.

Q. That is to say, it may refer to different particular foremen's jobs?

A. Yes.

Q. Not all of the report is interesting to all foremen?

A. No, not all of them.

Q. You mean just part of it for particular foremen?

A. Yes.

Q. If the superintendent reads it, then the general foreman reads it?

A. Yes.

Q. Then, do you go over the head of the foreman or assistant foreman or—

A. (Interposing) No, I show that to the foreman, then he takes it out and he tells his assistant foreman and his leaders, whoever he needs to for that correction to be made, or whatever the job is.

Q. Whatever in that assistant foreman's section is needed, he gets off of that report?

A. That's right.

Q. What is the next thing the assistant foreman does?

A. He contacts his foreman, as a rule.

Q. Then he goes on the job?

A. Yes.

Q. And is he next to the men, the workers?

876 A. No, there is a leader.

Q. As far as supervisors are concerned, he is the nearest man to the men who work?

A. Yes.

Q. What does he do during the day? Is he in the office or on the shop?

A. No, he is very, very seldom in the office, unless there is some little report he has to make up, perhaps, but he is never in the office for any writing, or anything like that. He stays out on the floor and supervises the job.

Q. In the normal course of the day, does he see the superintendent or the division manager?

A. No.

Q. He has no occasion ordinarily to go to their offices?

A. No.

Q. Does the superintendent or the division manager ordinarily have any occasion to go, or do they go, to the assistant foreman's place in the shop?

A. No, unless he asks—unless he walks around the department and speaks to him.

Q. That would be occasional or would it be habitual?

A. No, just occasionally.

Q. During the course of the day, does the assistant foreman have any further contacts with his foreman, ordinarily?

877 A. Well, with his foreman, yes.

Q. And this foreman has, on the average, about how many assistant foremen under him?

A. Generally, just one.

Q. What would be the contacts in the course of the day between the assistant foreman and the foreman?

A. Well, just on the progress of the job. For instance, there may be one job where they have to move a person, or get so many parts made here, or if some part is not fitting like it should and they will have trouble in the inspection department to get it through, or if there is a shortage of stock, or perhaps if a man wants a leave of absence and ask his assistant foreman, he, in turn, will contact his foreman.

Q. Does the assistant foreman make any written report in the course or at the conclusion of the day?

A. Except perhaps he will make a written report of the number of people that are absent, or something like that. Each group has a form that we use in our department and they write down the names of those absent so we can make a check on that absenteeism.

Q. To whom does he hand that?

A. To his assistant foreman.

Q. Is this about what the assistant foreman does during the day?

878 A. Yes.

Q. Spends his time there with the men and has these contacts you described?

A. Yes.

Q. Let us take the foreman now. He comes in and he has this man and so many machines and men under him. What are his contacts?

A. Of course, he has his contacts with his assistant foreman and he is generally around in the group and if he runs into a difficulty, something that he can't handle himself or thinks it is perhaps a little serious, he will report that to the general foreman.

Q. Is he out in the shop among the men most of the day or in the office?

A. Yes.

Q. Which one?

A. He is out in the shop all the while. They have a little metal desk at each sub-assembly station and he does his little bit of writing there.

Q. You indicate some little desk about two feet wide, or something like that?

A. That's right.

Q. Is there any great amount of difference between what the assistant foreman and the foreman does in the course of the day?

879 A. Not a great deal.

Q. Then, apparently, it is mainly a difference in the authority that they possess?

A. Yes.

Q. One is just the superior of the other?

A. That's correct.

Q. They are doing about the same thing all day, apparently?

A. Yes, only this, the foreman has to assume a little more responsibility on giving advice.

Q. The foreman has more than one assistant foreman, let us say, then, in actual physical territory, his authority would extend further than that of the assistant foreman in some cases?

A. That's correct.

Q. But in some cases the physical area, the authority is exactly the same as the assistant foreman's authority, that is, between the foreman and the assistant foreman?

A. Yes.

Q. Now, let us take the general foreman. You have indicated he gets this report from the superintendent of the previous shift. What does he do next? He gets that and passes it down the line?

A. Yes.

Q. What does he do next?

880 A. The usual rule is to contact each foreman out on his sub-assembly line and see how he stands for help or for absenteeism, rather, and very often he has to go to one foreman and ask him to give him two or three men.

Q. He uses his authority to equalize the equipment?

A. To equalize the labor-load.

Q. Does his authority go any further as to machines and materials?

A. When you have your labor-load, then you check with each foreman and ask him if there is any shortage of parts. The foreman will know that. The general foreman will tell him to let him know when the pieces come in. Perhaps you will get in enough to last for one or two hours and you have to wait for more to come in. In other words, I will say to a foreman, "How many pieces of this do you have?" And he will say, "Twenty." That's enough to last him, we will say, for two hours. At the end of two hours I will tell him to let me know if those parts come in.

Q. Does the general foreman make any written reports during the day?

A. No, outside of leaving a note for the next shift, not to any extent.

Q. Does he see the superintendent during the course of the day?

A. Yes.

881 Q. When and on what occasions?

A. Well, say I had gotten into a difficulty, a shortage of parts, I would confer with the foreman of the stock division and find out how long those parts would be—how long it would be before they would come in, and if it was a case where we were going to be tied up for a half hour, I would report that immediately to the superintendent.

Q. Does the general foreman spend his time in the shop among the men or mainly in his office?

A. Most of his time is spent on the floor.

Q. Of course, a man's duties might control that, to some extent?

A. Oh, yes.

Q. If he can make better progress on the floor, he goes on the floor, is that it?

A. If his labor-load is good and the parts are good, it is a little easier on the general foreman. If his labor-load is not good and the parts are not coming in, you have to watch all the while. If our parts don't come down—well, we have to see that these parts must come off the sub-

assembly lines to meet our main line coming down, so we have to watch pretty close.

Q. Do you make a written or oral report on the hour?

A. We have a girl that comes around and takes a count of the number of parts done at each station, then
882 she calls that up to the head man on the night shift, I think it is, and it is run on a teletype and put on a big blackboard, so we can all watch it all the while.

Q. (By Mr. Nelson) Mr. Turnbull, you have indicated that the information concerning the day's operations, the suggestions originating with the foremen, comes through the foreman, through the general foreman up to the superintendent?

A. Yes.

Q. Now, let's take another subject matter, not the operation of the plant, but the relation of these foremen to each other. You have indicated that they have authority in the order named there as vested by the Company?

A. Yes.

Q. Now, let's assume a wholly supervisory situation where the only thing involved are the relations of these four classes of men to each other. Can an assistant foreman by-pass his foreman and general foreman and go directly to his superintendent?

Mr. Donovan: May I have that question, please? I tried to get it and I couldn't.

Mr. Nelson: I said, can the assistant foreman in matters relating only to foremen and not relating to the day's operation—relating to the relations among the foremen, can an assistant foreman by-pass his foreman and
883 general foreman and go directly to the superintendent? Let's assume a case where he wants a raise or something or a case where he wants to complain of either the foreman or general foreman.

Mr. Dahling: I wonder if this witness is qualified to answer for the Packard Company generally. He can only answer as to his own experience.

Mr. Nelson: If you don't know, tell us so. If you do know, I want your answer.

The Witness: It can be done, yes.

Q. (By Mr. Nelson) Let's assume a case where an assistant foreman desires to complain of the general foreman.

A. If he wanted to complain of the general foreman?

Q. Let's assume that, whether right or wrong.

A. He could go to the division manager, yes.

Q. And go right by the foreman?

A. Well, he would likely tell his foreman.

Q. Now, if the general foreman was the object of the complaint, must he also tell the general foreman, or can he by-pass him and go to the superintendent?

A. Well, there is no set rule, Mr. Nelson.

Mr. Donovan: He said he could go to the division manager.

Mr. Nelson: That is right, division manager.

The Witness: Yes.

884 Q. (By Mr. Nelson) He can by-pass a man above him in supervision as to whom he has a complaint?

A. As far as I know, there is no set rule. I have never really had an occasion like that.

Q. You do not know of any incident like that?

A. No. I have always tried to tell these fellows that the place has to operate like an army and that he should go to his superior in every case. The department goes more smoothly. In running the department, those things do happen. In one division, they have what is called a nickname among us, a "Gestapo" to look after what the foremen do. It is the D Division. The foremen complain that the manager in that division has a real Gestapo force.

Q. They report directly to him?

A. Yes, like a lot of little stooges.

Q. What is the D Division.

A. The machine division.

Q. Who is head of that?

A. A man named Crawford.

Q. You mean to indicate by that answer at least, in the D Division that the assistant foremen may and do by-pass the foreman and general foreman and go directly to the division manager, namely Crawford?

A. Yes.

Q. Has that been a matter of some time, or is it just
885 a short incident?

A. We claim that 90 percent of our discharges are with that manager alone—of foremen—he fires them on a minute's notice and we never know what is happening over there.

Q. You mean to indicate by that that the foremen likewise would disregard the general foreman and go straight to the division manager?

A. That is the way they seem to operate over there.

Mr. Donovan: What was the answer?

Mr. Dahling: Over there is the D Division?

The Witness: Yes.

Q. (By Mr. Nelson) How big is Division D?

A. It is a fairly large division. I don't know just how many are in it now but it is a big division.

Q. It is one of the largest divisions in the plant?

A. Yes.

Q. And you say that you have troubles and complaints that originated in that division? Is it of the supervisory force or the maintenance and production workers?

A. In the supervisory there are also complaints there.

Q. That is where you have trouble?

A. Yes.

Mr. Donovan: Just a moment. I will ask that that last question and answer be excluded and I object to it.
886 I think it is too general. The word "trouble" has a connotation on the record which is not justifiable against the Employer. If he wants to get specific incidents and explain what he means by that—

Mr. Nelson: (Interposing) All right, I will.

Mr. Donovan: The witness said that there was no set rule to his knowledge. And it is confined to one department. If he is telling us about generalities, he said that there was no set rule.

Trial Examiner Jaffee: He is telling us about Department D and that is not a generality.

Mr. Donovan: What does the word "trouble" mean? That has not been defined and I cannot relate it to the original question.

Trial Examiner Jaffee: I can relate it to the previous answer and I do not see how else you can relate it.

Q. (By Mr. Nelson) Counsel has suggested that I have you illustrate what you mean by "trouble". I know you cannot take too many of them, but will you pick out one incident and illustrate what you mean by the word "trouble"?

A. Yes. We had a foreman fired there three weeks ago and another man brought out of the previous department or division where this manager was in, to take his job. He was given notice, to my understanding, at five o'clock on Friday night and he was out—

887 Mr. Donovan: (Interposing) I will ask that the answer be stricken. He says "To my understanding". We do not know—

Mr. Nelson: (Interposing) He is an officer—

Mr. Donovan: (Interposing) I would like to register an objection against the question.

Mr. Nelson: Do you have to do with the handling of these incidents?

The Witness: We hear the case and we investigate every case that comes up.

Mr. Donovan: On this question that I objected to concerning the word "trouble" the trouble apparently is—I am at some loss to define it myself—is that it is a complaint by this witness, a grievance, if you like, or something of that kind, that the foremen were having trouble with or complaining about now. Or rather, that this witness is from the witness stand. Apparently it is a complaint that some of the supervisors do not go to their immediate supervision or superiors but by-pass them. Their grievance, in that respect before the War Labor Board Panel was that they did not have any access to higher supervision. That is an additional reason. I want to know what he means by the word "trouble". I think he means a complaint of some kind. If it is a complaint, it is one hundred percent different from the complaint before

888 the War Labor Board Panel where they claimed that no foreman could get to higher supervision.

Trial Examiner Jaffee: The witness was asked what he means by the word "trouble". The answer may remain.

Q. (By Mr. Nelson) Using the word "discipline" in its very broadest sense, Mr. Turnbull, may a foreman of the lower rank outrightly discipline a foreman of a higher rank?

A. No.

Q. May he initiate such discipline by complaint or complaining himself or giving information to somebody higher than the higher supervisor? For instance, can assistant foreman go to the superintendent or division manager?

A. No, not on that way, I wouldn't say.

Q. He must go through the regular routine?

A. There is really no set rule on it at all but it is generally practiced that way.

Q The practice is to do it—

Trial Examiner Jaffee: (Interposing) The practice is to do what?

The Witness: The practice is for the assistant foreman to take his complaint to the foreman.

Trial Examiner Jaffee: Suppose it is a complaint about the foreman.

The Witness: He may go to the next in line, the general foreman.

889 Q. (By Mr. Nelson) Now, when the assistant foreman, we will say, brings in some matter, a complaint, we will say, to his foreman and then to the general foreman, may the general foreman stop that complaint right there, or must he pass on unless it is resolved?

A. Well, he would pass it on.

Q. He would pass it on?

A. Yes.

Q. If it is not resolved?

A. Yes.

Q. However, it may be one of the kind that he can solve?

A. If it is one that he can solve—a small thing, he would solve it.

Q. If it is more than that, he must pass it on?

A. Yes, such as a change of rate.

Q. Or the hiring or firing or demotion or a layoff?

A. He would have to pass that on.

Q. Or a permanent transfer?

A. Yes.

Q. He would have to pass that on to higher supervision?

A. Yes.

Q. You are referring now to a general foreman?

A. Yes.

Q. Now, I wonder if you have given us in the examples you have just related of a day's work of each of
890 these levels of foremen, the extent of the consultations there are among them? In other words, how frequently during the day does the assistant foreman consult with the foreman and the foreman with the general foreman?

A. Well, the assistant—

Mr. Donovan: Are you asking him with reference to his own department?

Mr. Nelson: I am asking him with reference to his own knowledge and that would necessarily be somewhat limited to his department.

The Witness: The assistant foreman, of course, confers with his foreman quite frequently because as I say, every hour a record is kept of the production. It is not necessarily every hour that the foreman would come to the general foreman because the report comes in on the teletype. If production were down on his station, then the general foreman would be contacted immediately as to the reason why. If his stuff is running good he might not talk to that foreman all night or all day.

Q. In other words, the smoother it runs the less consultation and the tougher it is the more consultation, apparently?

A. Yes.

Q. Outside of that which you have mentioned in this testimony here, the foremen's meetings at which a
891 representative of the Company—

A. (Interposing) Yes.

Q. (Continuing) —talks on a stated subject selected by the Company to the foremen?

A. Yes.

Q. Do I understand again that the foremen of all four grades attend that school together?

Trial Examiner Jaffee: It has been at least four times.

Q. (By Mr. Nelson) Is that correct?

A. Yes.

Q. Is there any other consultation among the foremen in the plant than the consultation among them that you have just now mentioned—I mean outside of the Association?

A. Yes, sometimes the division manager might call the foremen—a meeting of the foremen in his division to discuss some new idea that is going to be put into effect, or some problem along that line.

Q. You say "sometimes." Will you give us that in a little more concrete material?

A. The last one I was at was a matter of when that maintenance strike was on—six weeks ago, I think—at that time we were all called to the division manager's office and we discussed the War Bond Drive that we had on for one thing. And then we discussed ways and
892 means of handling grievances and we also discussed the new penalties being put into effect by the Company and the revised edition and things like that that are usually discussed. Some divisions have those meetings more frequently than others.

Q. You indicated you were to one six weeks ago. Can you remember how long before that you had been to one?

A. I have only been to two that I can remember since last March.

Q. Two in some nine months?

A. Yes.

Q. Some nine or ten months?

A. Yes.

Q. Is that about an average in your experience?

Mr. Donovan: He has already testified that they vary by departments. That has all been over and covered.

Q. (By Mr. Nelson) Is that your average experience or is that more frequent or less frequent than they have been in your experience in the factory?

A. That is about all we have. They are not more than once every three months anyway.

Q. What would you say as to other parts of the factory, so far as your information goes?

A. Some have as many as every two weeks and some

even more. I understand that it is a division manager's problem and he runs it whatever way he wants to handle it.

893 Q. Then there is nothing to stop him from having frequent conferences with supervision in his division if he wants to that you know of?

A. Yes.

Q. What about the D Division? What is your information with respect to conferences in that division?

A. The men complain that he has them in there very, very frequently.

Q. You mean supervision?

A. Yes.

Q. Supervision meetings in the division manager's office in the D Division?

A. Yes.

Q. By "very frequently" what do you mean specifically?

A. Once a week or so.

Q. A moment ago you said something about discussing a grievance with your division manager on one of these meetings—I think it was the one you said six weeks ago.

A. Yes.

Q. Were you at that time an officer of the Association?

A. Yes.

Q. Was any officer of the Association present other than yourself?

A. Yes.

Q. Who?

894 A. No, wait a minute. I am wrong about that. He is an inspector—

Q. (Interposing) Then you would be the only officer?

A. Yes.

Q. Practically all the people at the meeting with the division manager were supervisors?

A. Yes.

Q. And members of the Association?

A. Yes.

Q. Was reference to the Association made at that conference?

A. No.

Q. Did you, in fact, go into any specific grievances or was it just grievances in general that were discussed?

A. No, it was a discussion of the grievances involved in a department. The discipline to be put into effect in the department to run the department correctly.

Q. As among foremen or between foremen and their workers?

A. No. As between workers and foremen.

Q. Mr. Turnbull, prior to this election, were you present at any meetings with representatives of the Packard Company?

A. No, not prior to the election.

Q. After the election, were you present at any meetings with officers of the Packard Company?

A. Yes, some well after.

895 Q. Did you at those meetings discuss grievances or methods of handling grievances of foremen?

A. No.

Q. Have any grievances been handled, to your knowledge, as to foremen since the election with the officers of the Company? That is, in fact, have you met with the officers and discussed grievances and arrived at solutions?

Mr. Donovan: Just a minute. I think the witness just answered that there were no discussions in meetings that he said he knew of.

Mr. Nelson: Yes, in that particular one. I am asking about any particular others. In other words, has the Company actually sat in fact with officers of the Association and either discussed grievances or provided means for solving grievances since the election?

Trial Examiner Jaffee: You mean as officers of the Association?

Mr. Nelson: No, I don't mean that, not yet. Just the point of fact as to whether the Company sat with the representatives of the Association and solved grievances.

Trial Examiner Jaffee: Let's say with men who were representatives of the Association.

Mr. Nelson: Yes.

The Witness: A grievance committee together with myself—

896 Mr. Donovan: Just a minute, I object to this question because I think it is irrelevant. The Trial Examiner will recall the testimony as to the Foremen's Training School. As the Trial Examiner said, undoubtedly, there were members of the Foreman's Association present at those meetings. There were, no doubt, representatives of the Foreman's Association there and they were representatives of the Foreman's Association in the sense that they were officers. I don't understand what the relevancy of this is.

Trial Examiner Jaffee: He may answer.

The Witness: The grievance committee, together with myself, were called back in to the plant just after the strike took place and we met with Mr. Floyd Bird in his office.

Mr. Donovan: I think the date should be fixed.

Mr. Nelson: There has only been one strike there.

Mr. Donovan: There has been more than one.

The Witness: He asked us what our demands were.

Mr. Nelson: Mr. Donovan insists that you fix the time.

Mr. Donovan: I want to know whether you are talking about the strike in January of the foremen or the strike of April and May?

The Witness: The strike took place in May; May 5th, I think it is, was the first day of the strike.

897 Mr. Donovan: 1944?

Mr. Nelson: The Packard supervisor's strike in 1944, May, 1944.

The Witness: In May, 1944, at 9:30 P. M. was when we went into a meeting with Mr. Floyd Bird.

Q. (By Mr. Nelson) And it was immediately following that that the strike was called off?

A. No, it was immediately following the strike that the meeting took place.

Q. Tell us what was said.

Mr. Dahling: Mr. Examiner, I repeat my previous objection, that all of these matters took place prior to the filing of this particular petition and that this testimony or any testimony along this line is therefore incompetent, irrelevant and immaterial, and has nothing to do with the issue now before the Trial Examiner.

Trial Examiner Jaffee: He may answer.

The Witness: We met with Mr. Floyd Bird and he asked us what he could do, if anything, to get the men back to work and he told us that he was very sorry we had gone out. Te told us that he would like to be the man to take the information forward to Mr. Christopher, the president of the Company, as to what our demands were before we would resume work. We told Mr. Bird that complete recognition was what the men demanded and at the
898 same time Mr. Walter Smith was in the office. By the way, we told him that recognition was that what the men demanded and he said, of course, he wasn't in a position to give it to us but that he would talk to Mr. Christopher and see if an arrangement could be made for a meeting with Mr. Christopher. We left the office with that understanding and we went back in the next morning and met with Mr. Christopher and Mr. Bird. I think we met on two occasions—anyhow, on this occasion we met with Mr. Christopher and told him what we wanted and we had quite a discussion with him but we didn't get any place.

Q. Now, following that, did you, as officers of the Association, or representatives of the Association, meet with officers of the Company to discuss grievances?

A. No.

Q. To your knowledge, has there been any such meeting?

A. No.

Trial Examiner Jaffee: Have you much more, Mr. Nelson?

Mr. Nelson: Well, not so much, but I have some more questions, a dozen, perhaps.

Trial Examiner Jaffee: Go ahead.

Q. (By Mr. Nelson) You have indicated in your testimony here, Mr. Turnbull, that foremen of the grades settle the trivial grievances and the more important ones
899 they are not able to settle they simply send them on up the line. Now, in number of grievances, how does that stack up? Are the trivial much the greater in number; are the serious grievances the lesser? And to what extent?

A. The trivial ones are the greater.

Q. In number?

A. Yes.

Q. How would you classify them? Suppose you just took grievances and counted them, what percentage would be trivial, what percentage are serious enough to go on up, in your experience?

A. We don't have very many serious ones. Most of them are trivial.

Q. Well, would you be willing to hazard a guess as to the percentage on that or guess how many serious ones you have had, say in the last six months?

A. Oh, I suppose if you have—you may have as many as four or five in a week, ones that have to go further, but that's about all.

Q. Four or five a week would be the most?

A. That would be the most, if you have that many even.

Q. Do you recall the report of the Packard Motor Company dated December 7, 1944?

Mr. Donovan: What kind of a report, Mr. Nelson?

Mr. Nelson: Packard Motor Company Labor Rela-

900 tions Department.

The Witness: I think I remember that one, yes.

Mr. Nelson: I ask the Reporter to mark this as an exhibit.

(The document above referred to was marked for identification as Petitioner's Exhibit No. 33.)

Q. (By Mr. Nelson) Now, here in subdivision B, Section 2, I notice on this report the Company estimates the great majority—

Mr. Donovon: (Interposing) Just a minute. Mr. Trial Examiner, I think at this point the Employer's counsel is unable to measure the propriety of this evidence because he is totally uninformed about what counsel is showing to the witness. He started to question him about a document called a report. I think, without further elaboration on the record, we ought to be able to find out what he is talking about.

Mr. Nelson: I offer it in evidence and I offer it to counsel for examination. We got it from the Company.

Mr. Donovan: Well, right at the start, the document does

not appear to be a report at all. It is headed, "Plant Committee Bulletin" and I have not examined the rest of it. Is this it, Mr. Nelson? (Indicating).

Mr. Nelson: Yes, that is it; we got that from the Company under that date.

901 Mr. Dahling: Mr. Examiner, we object to the exhibit on the basis that it is irrelevant. We do not deny that it is an authentic report. That is, we are not objecting to it because it is not signed by the various parties and that sort of thing; merely the relevancy of it.

Trial Examiner Jaffee: May I see it, please?

Mr. Nelson: Yes, sir.

Trial Examiner Jaffee: I assume that the Union referred to in Petitioner's Exhibit 33, for identification, is the UAW-CIO, is that correct?

Mr. Nelson: Yes, sir, it is correct, Mr. Examiner.

Trial Examiner Jaffee: Petitioner's Exhibit 33 is received.

(The document heretofore marked for identification as Petitioner's Exhibit No. 33, was received in evidence.)

Q. (By Mr. Nelson) Mr. Turnbull, the question really was what would you say was the percentage of grievances that are trivial and the percentage that are serious?

Mr. Donovan: You asked him that before and he said that practically all of them are trivial.

Mr. Nelson: All right, if you are willing it should stay that way, I am.

Q. (By Mr. Nelson) Is that about so, practically all of them are trivial?

A. There is a certain number, certain ones we have

902 no option with.

Q. With respect to the day's work, they are insignificant in themselves?

A. That is correct, yes.

Q. You agree, do you, Mr. Turnbull, that you yourself resolve these grievances, or some foreman under you, and you regard them all as trivial?

A. Practically all of them, yes.

Q. Is it also a fact that most of them never reach the grievance stage? By that I mean, formal papers?

Mr. Donovan: Just a minute. Is this again addressed to grievances in this man's own department?

Mr. Nelson: It includes every kind of grievances he has to do with.

Mr. Donovan: But you are talking about grievances in his one department?

Mr. Nelson: We are talking about his experience.

Mr. Donovan: Mr. Examiner, counsel is evasive and we want to know whether this is a question based on plant-wide grievances or is confined to this witness' own department.

Mr. Nelson: He will tell us about that.

Trial Examiner Jaffee: The objection is sustained.

Q. (By Mr. Nelson) I will ask you whether these ever reached the formal grievance stage, that is, these petty trivial grievances?

903 A. It is surprising how some of them are trivial and they get that far. Quite a few get that far, they are very trivial grievances in our opinion, though.

Q. Do they reach the grievance stage of putting them in writing?

A. Oh, yes.

Q. So you apparently are including many that are not written up, that come to you as general foreman?

A. Yes.

Q. Now, what do you mean by trivial or petty grievances?

A. Well, you may have a case where a man, perhaps, his stock is not running right, maybe he is complaining that a nut is too tight to go under the thread. It is just little things like that, and you have to soothe a man down. Perhaps he will grumble about the amount of parts he has to make, or some tools he has to make on the job. Perhaps he can't get a rag out of the tool crib, or they haven't any clean ones, and he will complain about that. They are only minor things and are bound to arise in any plant.

Q. Reference has been made to the time study. Does the assistant foreman, foreman or general foreman have any authority over the time study?

A. No.

Q. Can the assistant foreman, foreman or general foreman request a restudy from the time study depart-
904 ment, assuming that the time study has some impact on his work, may the foreman of any rank request a re-study?

A. I haven't had occasions like that lately. They used to have them; but not lately. There is a new setup and I think the foreman is left entirely out of that; it is between the Union and the Company.

Q. So that is a trouble between the maintenance and production workers, and representatives of the Company?

A. Yes.

Q. And the foreman does not come into it at all?

A. No, not now. I think that is stated right in the book.

Q. Let us assume, just for illustration, the situation where you request ten additional men, recommended, and five are furnished. Is there anything you can do about it?

A. No.

Q. Nothing at all?

A. No.

Q. And does that apply to every rank of supervision including assistant foremen, foremen and general foremen?

A. Yes.

Mr. Donovan: I will ask that the question and answer be excluded. I think the record should reflect this man is giving information from his own department only, unless counsel makes the question differently.

Trial Examiner Jaffee: It seems to me that particu-
905 lar question specifically asked about the witness' personal experience in his own department.

Mr. Donovan: I am objecting to it.

Trial Examiner Jaffee: It may stay.

Q. (By Mr. Nelson) About the application in other departments, then, do you or do you not have information on the subject?

A. Every job is run by the process sheets and there is a stipulated time on that job set by the time study department, and that's what the foreman has to work to. Every job is processed and time allowance is put right down on that route sheet, we call it.

Q. So that answer, with respect to the ten men asked for and the five men supplied applies throughout the plant?

A. Yes.

Mr. Donovan: Same objection, Mr. Examiner.

Trial Examiner Jaffee: It may stay in, in view of the witness' further testimony.

Q. (By Mr. Neison) I think there is some testimony here about transfers, Mr. Turnbull, and I think you have indicated, or have you, that there is some power of transfer within the foreman's own department or section, but he has no power outside of that, is that correct?

A. In has own department he can transfer a man from one operation to another, in his own department,
906 provided it is agreeable to the steward.

Q. If it is the same classification of work?

A. Yes.

Q. Can foremen step across the line of classification and classify a man differently by assignment, to a different class of work?

A. Only to this extent, you can put a man from a higher rated job onto a lower rated job.

Q. Can you put him to a higher one than the one he held?

A. No.

Q. Can the foreman above the rank of assistant foreman transfer a foreman?

A. No.

Q. Either up or down?

A. No.

Q. Is it a fact that the foreman appears only at the first step of the grievance procedure, or does he follow it through in the various stages?

A. He may be called as a witness.

Q. Now, if he is not called as a witness, that is, to tell what he knows about an incident, does he normally go with the grievance procedure?

A. No.

Q. He normally does not?

A. It goes to the second stage; the steward and the
907 foremen get together first.

Q. Yes, and the foreman is present at that, of course?

A. Yes, then it becomes a written grievance.

Q. Yes?

A. Now, the grievance procedure, as a rule, is to go from there with the district steward from the Union and the division personnel man for the Company. At that time, the district steward will call in the steward of the department and the personnel man will call in the foreman of the department.

Q. But the foreman comes in only if he is called?

A. Yes.

Q. By the other authority in the Company?

A. That is correct.

Q. I think this has been testified to, but I want to make sure it is in the record, according to your understanding and experience in the Company: A worker may not be discharged from the employ of the Company by a foreman, is that right, without some other authority intervening and confirming?

Mr. Donovan: Just a minute. I will object to the question again, Mr. Trial Examiner, first, because it has been covered several times, and the way the record is left is that a foreman can recommend an action, whether or not that is eventually the action taken depends upon the
908 particular case. Why go over all that four or five times? There is no question that he recommends these things and it has also been shown the reasons why in cases his recommendation is not followed through. The testimony shows that in the majority of cases those recommendations are followed. They originate the recommendations.

Trial Examiner Jaffee: Mr. Donovan, I might have been inclined to sustain your objection if you had not gone on and stated some things which I think are not in evidence. He may answer the question. Will you read the question?

(Question read.)

The Witness: That is correct.

Q. (By Mr. Nelson) Does the foreman of any rank, assistant foreman or general foreman, have the power to change machines in their position, in relation to each other, to change partitions in the factory? In other words, make major changes in his department?

A. No.

Q. Where does that power lie?

A. The foreman would perhaps recommend that or consult the division manager or the superintendent, perhaps, and then they in turn would get the planning department and if the planning department won't move it until there is an appropriation of money to cover the cost of it, it isn't done.

Q. Does the foreman have any power to choose the
909 type, manufacture or make of a machine at all?

A. No.

Q. He takes the machine furnished by the Company?

A. Yes.

Q. And as furnished by the Company?

A. Yes.

Q. Who determines whether a worker shall be promoted to the rank of foreman of any grade?

A. I don't know that one.

Q. Well, does the foreman determine that question?

A. No.

Trial Examiner Jaffee: Do you determine it?

The Witness: No.

Q. (By Mr. Nelson) Can an assistant foreman originate a query?

A. In certain circumstances, Mr. Nelson, where he is actually, you may say, doing a foreman's job. In other words, where he has a group and no foreman is over him. He is assuming the responsibility of that group or department, then he could write out a query.

Q. Is this a correct statement of your testimony: If an assistant foreman is in fact performing duties of a foreman, then he may originate a query?

A. Yes.

Q. If he is not, does he or does he not?

910 A. No, he would give it to his foreman.

Q. If it is originated by him, under the circumstances you have related it, he would sign the paper?

A. Yes.

Q. Would he in any other case sign it?

A. No.

Q. So a query would ordinarily be signed by either the foreman or the general foreman?

A. Yes, sir.

Q. And only by them?

A. Yes.

Q. Or by some person—by some person of equial authority?

A. Yes, sir.

Trial Examiner Jaffee: Where the foreman or assistant foreman signs it, do you also sign it?

The Witness: Yes, I also sign it.

Trial Examiner Jaffee: Where the assistant foreman signs it and there is a foreman over him, as distinguished from the general foreman, does that foreman also sign it?

The Witness: He wouldn't in that circumstance. If there is a foreman over him, the foreman would originally write it.

Trial Examiner Jaffee: In other words, by the time it gets to you, there is one other signature?

A. Yes, one other signature.

911 Mr. Nelson: I believe that is all.

Trial Examiner Jaffee: I assume there is going to be some recross examination?

Mr. Dahling: Yes, Mr. Trial Examiner.

Trial Examiner Jaffee: Very well, we will have a ten minute recess.

(A short recess was taken.)

912 **Recross-Examination.**

Q. (By Mr. Dahling): Mr. Turnbull, you testified about a foreman who was demoted three weeks ago. Will you give us his name?

A. There was George Cikity, was one, Charles Forsythe was another and Herman Neuman was another.

Q. As I recall the testimony that I have in mind, it was that this one foreman was given notice about three weeks. You mentioned one foreman, I believe, and you stated that you discussed the matter with someone, do you recall that testimony?

A. Yes, I can give you perhaps a little more specific details. There were three of them slated for demotion. Two of them were demoted on the first of the month and the other one was a man that had been with the Company for about twenty-nine years, I understand.

Q. What was his name?

A. That is Herman Neuman.

Q. Yes.

A. And Herman Neuman had been trying to get off of the supervisory job, as a matter of fact, for quite a while, to get back into the Experimental Department where he had previously worked. When it was discussed about taking him off and putting on as a leader—

Q. Who discussed that?

913 A. The superintendent instructed me to take him off as a leader.

Q. Who did he discuss it with?

A. With me.

Q. Yes.

A. He had previously discussed it with the division manager.

Q. Did he tell you that?

A. Yes. They had a meeting of the division manager and the superintendent of the F. K. Division where it was all decided.

Q. Were you present at that meeting?

A. No.

Q. Then you do not know what occurred at that meeting?

A. No.

Q. And then you do not know what occurred at that meeting?

A. No, except from what he told me himself.

Q. He told you that this was discussed?

A. He told me that we would have to reduce the three men down. There were two that I mentioned, Cikity and Forsythe, and then there was Herman.

Q. What was the superintendent's name?

A. Mr. Al Kline.

Q. And the time was about three weeks ago?

914 A. Yes, at the beginning of December. The two that were demoted were the two latest ones put on and they had only been on a matter of two or three months as assistant foremen and they, of course, had no argument about going down. But the other man had been an assistant foreman over two years. I spoke to Al Kline and in fact we were pretty well in agreement, the two of us, that we did not like to have to put him down if we could manage to get him transferred back to the Experimental Department and just put a transfer through, and that wouldn't hurt the man's feelings as much as if we had to tell him he would be demoted. We left a note for the division manager in the daytime—

Q. You say "we," whom do you mean?

A. We discussed it, Mr. Kline and myself and Mr. Kline himself left a note for the Division Manager.

Q. Is Mr. Kline the superintendent?

A. Yes. And we sent Herman Neuman—we instructed him to come in and see Mr. Jackson.

Q. Who is Mr. Jackson?

A. He is the division manager. So he came in and saw him and he was entitled to a week's vacation. So, he was allowed that week and then when he came back there was no vacancy for him in the experimental room and he was reduced down to a leader, with the promise that as soon as there was an opening in that department he would
915 be transferred over to that department. Meanwhile he is working as a leader on his regular job where he was an assistant foreman.

Mr. Donovan: I did not hear the end of the answer.

Trial Examiner Jaffee: Read the answer.

(Answer read.)

Q. (By Mr. Dahling): What was the reason for these demotions three weeks ago, or about the first of December?

A. We cut back in production in the number of employees in the department.

Q. I believe you said the number of employees was reduced by about 200?

A. Yes, to be exact I think we had 575 and we dropped down to 337.

Q. Now, Mr. Turnbull, you testified that if you requisi-

tioned ten men and only five men were sent, there was nothing you could do about it?

A. No, except complain.

Q. You could go back to your superintendent and complain that you could not get the work out with those men?

A. Yes.

Q. Are you taking the position in answering the question in the manner that you did, that the Company was just arbitrarily refusing to give you more men?

A. No, I wouldn't say that, Mr. Dahling, it is sometimes difficult to get them in a department just when you
916 want them.

Q. And the Company itself has trouble these days in getting sufficient men?

A. Yes, that is the main reason.

Q. That is the main reason?

A. Yes.

Q. And, of course, as a foreman, you would do your best to keep up your war work production, even if you could not get these men?

A. Yes.

Q. You also testified that you could not transfer a foreman up or down. If you had an assistant foreman under you who was not producing and was not satisfactory, what would you do?

A. I would report that to the superintendent.

Q. What sort of report would you make? What would you tell the superintendent?

A. I would tell him honest that the man isn't any good.

Q. That you could not get out the production if you had to have a man like that?

A. Sure.

Q. And then the superintendent—what would he do?

A. He would discuss it with the division manager and perhaps come to an arrangement to move him.

Q. Mr. Turnbull, you also testified that you could
917 not discharge a worker without some other person agreeing, is that correct?

A. Yes.

Q. And that is your present position?

A. Yes.

Q. Well, we will say that you found a man who was unfitted for the job and could not produce and you wanted to have him removed from your department, what would you do?

A. I would write a query giving the man twenty-four hours' notice.

Q. Then what would be your next step?

A. The next step is to give a copy to the man involved and also to the steward.

Q. Well, then, we will say that the steward agrees with you; what happens then?

A. He would sign that query that it was okay to discharge the man.

Q. What is the next step?

A. The next step would be that the man himself—usually on cases like that we refer the man back to the employment office. We give them twenty-four hours' notice to be cleared from the payroll of the department. He is referred back to the employment office and if they can place him somewhere else it is their business.

918 Q. If they cannot place him somewhere else what happens?

A. Well, he is out, unless he can make a complaint to his plant committee of the Union and they take steps over the head of the steward or district steward and perhaps get him put back in the department. That has happened.

Q. And if he does not complain what happens?

A. If the man is satisfied to go then everybody is satisfied and that is all.

Q. That would be the end of it?

A. He would be out, yes.

Q. And cleared from the rolls?

A. Yes.

Q. You testified that you could not change any partitions or machines?

A. Yes.

Q. That is, you mean that you could not call in the millwrights and tell them to switch that machine over to this or some other spot, is that right?

A. That is correct.

Q. If you found a machine, however, which you did not think properly placed, what would you do about it?

A. I would discuss it with the superintendent or the division manager and they would in turn call the Planning or Process Department. The Process Department in turn would make the request for it through their proper
919 channel and I suppose once the money and everything is appropriated for the job then the job would be done.

Q. By the way, you say "money would have to be appropriated for that purpose."

A. Yes.

Q. What does the foreman have to do with the appropriation of that money of that character?

A. He doesn't have anything to do that way. As I understand it, the Process Department makes the estimate as to the cost of that change themselves and then they submit it to their people in authority and they decide whether it will be done. We have nothing to do with that at all.

Q. And if they carry out your recommendation it is done?

A. Yes.

Q. Now, I believe you said that the foreman couldn't promote. Did you mean he couldn't promote an assistant foreman?

A. Yes, that is correct.

Q. But I believe you have already testified that he could recommend such a promotion?

A. Well, you might tell your superintendent that there is a man doing a real good job but you do not have any say in that, as to the number of foremen or whether they will promote them, really, that is as far as you could
920 go. You could report he was doing a good job but you could not make a written report on it.

Q. And if you needed a foreman in your particular department you could recommend that one of the assistant foremen be given the job?

A. Well, we don't have anything to do with the number of foremen in there, to start with.

Q. Well, say that the number of foremen is fixed at ten

and one man quits and leaves his job and you need another foreman, could you recommend that one of the assistant foremen in your department be upgraded to that job?

A. Yes, I might do that or I might discuss it with my superintendent.

Q. As a matter of fact, that is done, isn't it?

A. Well, not with me. I have had to take what I could get any time I got mine.

Q. You don't make any such recommendations?

A. Any time they put in any assistant foremen they tell me they are putting them on and I don't have anything to do with it.

Q. Would that be because you do not care to make such recommendations?

A. No, it is just a matter of everyday occurrence, you might say. It is discussed with the division man-
921 ager and the superintendent, as a rule, on anything like that.

Q. Would you say that your situation is the same as all other foremen in the plant?

A. As far as I know, yes.

Q. You stated that an assistant foreman was not permitted to sign a written query and that that is signed by the foreman, is that correct?

A. Yes.

Q. Unless this assistant foreman happens to be in charge of a certain group of men?

A. Yes.

Q. But the query, however, or the contents of the query, the purpose of the query, is originated by the assistant foreman, isn't it?

A. Yes.

Q. The foreman may or may not agree with him?

A. Perhaps I haven't got that quite right. You mean the assistant foreman in that little group we were talking about?

Q. Take the case where the foreman signs the query?

A. Yes.

Q. Who originates the substance of the query? Who is responsible for starting that query on its way?

A. The foreman. If there is an assistant foreman work-

ing with him, the assistant foreman will discuss the
922 situation with him and the usual procedure would be for the foreman to say "I'll write a query," and he writes the query.

Q. That is, the assistant foreman calls some matter to the attention of the foreman?

A. Yes.

Q. And in that sense the assistant foreman does originate the matter?

A. He may from that angle, yes.

Q. The foreman could decide to write a query or he might disagree with his foreman?

A. That is correct.

Q. The same way that the superintendent disagrees with you, Mr. Turnbull?

A. Yes.

Q. And if the foreman was concerned at all about the matter he would discuss it with you?

A. Yes.

Q. And you might disagree with him, also?

A. Yes.

Q. You have, haven't you, disagreed with your foreman?

A. Yes.

Q. On this matter of trivial grievances, you say in your opinion the Union appeals quite a few of these so-called trivial grievances?

923 A. Well, some that seem perhaps trivial to us, yet they are often ones we cannot take care of. The usual everyday occurrences in there they do not appeal. In fact, they just discuss that and get over them. If they have one that to us may seem trivial, they will go ahead with that and write it on a grievance form and submit it to the district steward and he takes it up with the Personnel Department. In that case it just goes over our heads in that manner.

Q. On the matter of grievances, you have no written form of grievances for the first step of the grievance machinery, have you? That is, grievances that come to the foreman and are passed upon in the first instance by the foreman—the chief steward, I mean?

A. No, there is no special form for that.

Q. That is usually done by way of conversation or word of mouth?

A. Yes.

Q. And is settled in that manner?

A. Yes.

Q. However, the appeal that you talk about comes from the action of the foreman and chief steward, is that correct?

A. Yes.

Q. And that is a written form?

A. Yes.

924 Q. If such an appeal is made who passes upon the problem?

A. The district steward and the division labor relations man.

Q. When you say district steward, that is the district steward of the CIO?

A. Yes.

Q. He is the steward next in rank above the chief steward?

A. Yes.

Q. As a division steward would he be steward in charge of a number of departments?

A. Yes.

Q. And the chief steward, as you call him, would be only in one department?

A. One department, yes.

Q. When you speak of the division Labor Relations representative, you are referring to the Company's representative?

A. That is correct.

Q. And that Company Division Labor Relations man would have the same general authority over several departments as a district steward?

A. Yes.

925 Q. And if the grievances aren't taken care of satisfactorily at this meeting between the district steward and the division Labor Relations representative, what happens?

A. It then goes to the plant committee and the Indus-

trial Relations man, the Labor Relations man in the personnel office at the front.

Q. In other words, it then goes from the district steward to the plant committee for the CIO?

A. Yes.

Q. And it goes from the District Labor Relations representative to the Labor Relations representative next superior to the division man?

A. Yes.

Q. Now, you speak of the trivial grievances that are appealed. What do you have in mind when you say trivial grievances?

A. That are appealed?

Q. Yes.

A. I don't get many of them but I will give you an incident of the last one I had. Our main assembly line is on a conveyor line that travels all the while. With the Company in production on nights, there being a smaller production than there is on days, we find it perhaps a little difficult to proportion the work out. For instance, on days you run the line and you build practically six
926 jobs, roughly speaking, an hour and on nights we build, roughly, three an hour. We have been managing, by running that line about every fifteen minutes, and we stop it, and then we would get on so far and start it again and stop it again, and we manage to get our production every night by doing that. The men complained that they wanted the line cut down in speed to thirty-two jobs per night, and that in turn would involve speeding it up again for the day shift and altering that line for either shift. We explained that to the steward when he complained. We knew that the men were managing fine and getting by and to us that was merely a trivial thing to argue over. However, he saw fit to write a complaint and went over my head and took that up with the Personnel Department. That is in my opinion a trivial matter and it had to go further than I could do with it.

Q. You get quite a few complaints from the stewards that you feel are trivial?

A. Not that go past me like that, Mr. Dahling.

Q. Only a few go past you?

A. Yes.

Q. And you say you settle most of the trivial grievances between the steward and yourself?

A. I call them complaints rather than grievances, they are so small.

927 Q. That is a better word, it is a complaint and not really a grievance.

A. Yes.

Q. But the steward who complains about a number of things would complain about the work-load?

A. Yes.

Q. Aren't they usually due to the fact that they want to put as many men on the line as they can?

A. Yes.

Q. And they do complain about the speed of the line?

A. Yes.

Q. And you have to discuss all those matters with them, do you not?

A. We show them the route sheet. There is a time all set there and that is the time and that's all there is to it.

Q. Those route sheets you are talking about, what are they?

A. They are practically speaking, the layout of the job in detailed form of every job. For instance, if you take one part that has got to be built up, one assembly, it starts with the number of that assembly and tells you just all the operations to be done in completing that assembly and the time allowed for doing each operation.

Q. And that is broken down between the men who
928 are supposed to build that part up?

A. Yes, the foreman keeps that on his desk and watches the job as it is being done in rotation. The men do not see that unless a man complains and takes it to the steward. Then you take the steward and let him see the time in the book and you say, "There is the time that is allowed on the job." You explain to him how many men you have and you let him add up the time.

Q. And that comes to you from some other department?

A. That comes through from the processing department.

Q. How is the time of those jobs determined?

A. Generally at the start of a program the Process De-

partment will estimate the time on the job and at a later date when the job is being run fairly successfully they come and time the job.

Q. They make what they call a time study?

A. Yes.

Q. And that is made—we will take your department, the time study would remain in your department for a series of time studies?

A. Yes.

Q. And they would come in and determine in that time study the time it would take for a man to do a certain operation?

A. Yes.

929 Q. And they have a regular department in the Company that is in charge of that?

A. Yes.

Q. In making the time study do they select one of your operators?

A. They generally try out the jobs. I think under the new set-up, there is a new time study set-up which has just lately gone into effect, and under that set-up there is an agreement with the Union that they will try it on so many operations, two or three times at least, and not just on one operation or one operator or one reading of their watches.

Q. Well, who selects the men or man who is going to put through the operation that is being timed?

A. Oh, they select whatever men they want.

Q. You say "they select"?

A. The time study man.

Q. Does the steward have anything to do about that?

A. Nothing, no, not at the start.

Q. Does the time study man just come in and say, "We will pick you for this test"?

A. Yes, he will walk down and tell us he is going to time study a job and generally they tell the steward they are going to time study a job. At the very start of a job like that, I don't know, it is necessary to go to the

930 steward, but they go to re-time study them—they have the steward to re-time study them, I know that.

Trial Examiner Jaffee: Do you know whether they do it at random?

The Witness: Yes, just at random. In a case like that, as a rule, they would take two or three jobs and time them.

Q. (By Mr. Dahling): And the result of this time study is the time which a particular operation should normally take?

A. Yes.

Q. All of your processing is, then, based upon those time studies?

A. Yes.

Q. They are necessary, are they not?

A. Oh, yes.

Q. In other words, you would have to know the time that any process would take in order to be able to run the assembly line at all, would you not?

A. Oh, yes.

Q. And they serve a most useful purpose?

A. Yes.

Q. We will say that a time study was made and you felt that the men were being pushed too fast, that they could not keep up with the work or that they could not get
931 the work done in the time allotted to them, what do you do?

A. The steward would do it for you.

Q. You mean, he would get in on the job before you had a chance to?

A. Oh, yes.

Q. What would the steward do?

A. He would ask that a new time study be made. Under the new set-up, the Union has a time study man trained purposely for that job, and they would call that time study man from the Union to time the job for them and after that is done the Union time study and the Company time study men get together and come to an agreement on the time of the job.

Q. Now, getting back for a moment to these trivial grievances, do you know why they are trivial, why the Union insists upon an appeal if they are trivial?

A. Well, it just depends to a certain extent on the

steward in the department. Some stewards are better than others.

Q. The stewards, of course, are elected, are they not?

A. Yes.

Q. And I presume that a steward is then under pressure to satisfy the whims and caprice of the workers who elected him?

A. Yes.

932 Q. And he has to do that in order to be re-elected?

A. Yes.

Q. And he wants to be re-elected?

A. Yes.

Q. As a matter of fact, they do no work then, do they?

A. No.

Q. The more grievances they have, the less they would have to work, is that true?

A. That is correct.

Q. Because they are permitted time out to discuss grievances with you and possibly also are called in on appeal?

A. Yes.

Q. What, in your opinion, was wrong with the demand of the Union that this speed of the line be slowed down rather than stopped and started again?

A. Well, we see no need for it, for the very reason it would be an added expense not necessary. If the job can be done as it is done, we feel they have ample time to do the job and we see no reason at all why we have to go to the expense of changing that line over.

Q. If you had to slow down the line, would it be possible that the day shift might take the position that they should have the line slowed down, as far as they were concerned?

933 A. No, because they have more men and the production schedule is bigger.

Q. But the slowing down of the line would be more costly to the Company than starting it and stopping it, as was your practice?

A. Yes.

Q. Mr. Turnbull, Mr. Nelson questioned you with respect to your duties and responsibilities as a general foreman. In answer to your questions, did you include all the duties

you might be called upon to perform during any one particular day?

A. Well, they do vary a little, I suppose, from day to day. They are never exactly the same.

Q. When you testified as to the duties of foremen in answer to Mr. Nelson's question, did you include all the duties a foreman has to perform?

A. Practically all I can think of, of any consequence.

Q. Now, Mr. Turnbull, I believe you testified that one of your duties and responsibilities was to plan the work according to the schedule, is that true?

A. Well, yes, you don't plan the schedule, of course.

Q. No, but you have to plan the layout and the use of your men to perform the work?

A. Yes, sir.

934 Q. How about the men below you? Do they have to do the same thing, in the orbit of their responsibility?

A. Yes.

Q. It is your duty to see that production is gotten out on schedule, is it not?

A. Yes.

Q. It would be the duty of the foreman, as far as his particular part of the department is concerned, to do the same thing?

A. Yes.

Q. But you are ultimately responsible for that, is that correct?

A. Yes.

Q. It is also your duty as general foreman to see that the operations and processes are performed according to the routing sheets you talked about?

A. Yes.

Q. What is the duty of the foreman in that connection?

A. It is the same thing. He is responsible for his group of men.

Q. What is the duty of the assistant foreman in that connection?

A. Practically the same thing.

Q. Furthermore, it is your duty to see that the proper number of persons are placed on the job, is it not?

A. Yes.

935 Q. When I say "your duty," it is your duty as general foreman?

A. Yes.

Q. What does the foreman have to do about that?

A. If he hasn't gotten what he needs for the job, the number of men, and so forth, he will report it immediately.

Q. It is his duty to report it and endeavor to secure enough men for his particular endeavor of the job?

A. Yes.

Q. And that applies to all foremen, does it not?

A. Yes.

Q. It also applies to assistant foremen within the scope of their job?

A. Yes.

Q. I believe you testified it is your duty to see that material is available at all times?

A. Yes. Of course, the stock division is responsible and they are responsible alone for the material coming in, but it is still my responsibility to know that it is available, or I report it.

Q. What does the foreman do with respect to material or possible shortages of materials?

A. He will report that to the general foreman or he may himself go right to the foreman of the stock division and complain there. In other words, he will watch

936 the flow of his material as well as he can.

Q. What does the assistant foreman do?

A. He would generally report it to his foreman.

Q. After the material has been completely processed, it is supposed to be moved out of the department, is it not?

A. Yes.

Q. If it is not moved out, what do you do?

A. Oh, it's got to move out, because it's a moving line and another department is waiting on those engines for inspection.

Q. That is true as far as the assembly line is concerned, is it not?

A. Yes.

Q. The assembly line moves right along?

A. Yes.

Q. Other departments, however, would be working on different parts which would not be on the assembly line, is that not correct?

A. Yes.

Q. As to those parts, what would the duty of the general foreman be if they were not removed when completed?

A. He would report back to the stock division. The stock division controls that.

Q. I believe it is also your duty and responsibility to see that the work that is done is up to standard
937 specifications?

A. Yes, we have inspection and the inspection takes care of that, you see.

Q. You do the work up to specifications, because you have inspection?

A. Yes.

Q. In other words, if you had no inspection, you would not care whether it was done up to specifications or not?

A. Well, you can't build them unless you build them to specifications.

Q. In other words, it is one of your responsibilities to see they are built that way?

A. Oh, yes.

Q. How about your foreman with respect to quality, what does he have to do about seeing that the quality is proper?

A. Well, it's the same thing, he would have to maintain quality, because the Inspection Department would have to accept the parts.

Q. That same responsibility is placed upon the assistant foreman within his sphere of supervision, is it not?

A. Yes.

Q. Now, if you determine that the process you were using or which you had been told to use in your department was not maintaining proper quality, what would you do?

A. The Inspection Department, of course, would be
938 the first one to notice that and they would reject the parts. Now, if they were just a few, if there were just a few parts that would be sent back through the

Salvage Department to that department where they were made. If it was a bad complaint, a big number of parts were coming that way, the Inspection Department would check on it and quite likely a special assignment man would be called in on the job to trace it back to where it originates.

Q. If you determined the cause was in your department, what would you do about it?

A. It is up to the foreman to get it rectified. If a man is making scrap or damaging a part, then it is up to the foreman or even the assistant foreman may do it. He would check and see what's happening on the job, see if a man has been instructed correctly to do the job, whether the tools are right on the job or whether the material was bad when it came to him in the first place.

Q. In that connection, I presume it would be his responsibility if the workman were not properly trained to give him instruction?

A. Yes.

Q. That instruction would be in connection with the operation of the machine, if it was a machine that needed it, or if it was on the assembly line the method of carrying through the particular part of the work?

939 A. Yes.

Trial Examiner Jaffee: Mr. Dahling, I believe we are having much too much duplication here.

Mr. Dahling: Mr. Examiner, I am very sorry about that, too, but after this witness so minimized the things he did on redirect examination, I can see no other way out of it.

Trial Examiner Jaffee: I know, but the fact that he testifies one thing on redirect examination does not mean that I have to disregard what he said on the original cross.

Mr. Dahling: No, Mr. Trial Examiner, but, of course, the effect is there, and it would be pointed out that on such and such a date he said so and so were his duties. I know of no other way to clear the record on that point, except as I am proceeding now. I am asking this witness directly if in reply to questions of Mr. Nelson he stated what his duties were, and he has said yes. Now, of course, he did not, and in order to show he did not and that he

has additional responsibilities and duties, I am at a loss to know how I can put them in without—

Trial Examiner Jaffee: I commend to you the reading of what I said the other day which was, among other things, that the Board can add two and two together pretty well and generally come out with the correct answers.

940 Mr. Dahling: When are you planning on luncheon, Mr. Examiner?

Trial Examiner Jaffee: At the conclusion of your examination.

Mr. Dahling: I am sorry, sir, I am afraid we will all be late.

Trial Examiner Jaffee: Then we will all be late; we were late this morning.

Q. (By Mr. Dahling): Is it part of your duty and your responsibility to maintain proper working conditions in your department?

Mr. Nelson: I think that is too broad. That would include ventilation, housing, location of machines, safety of machines, and so forth.

Trial Examiner Jaffee: I think it is, too.

Mr. Dahling: I will withdraw the question.

Q. (By Mr. Dahling): Is it your duty and responsibility to see that the aisles are not cluttered up with material?

A. The stock division would have to look after that.

Mr. Nelson: That would be the only place, maybe, that they could put them.

Mr. Dahling: I am not asking you, Mr. Nelson, to answer for him.

Q. (By Mr. Dahling): We will say the aisles in your department are cluttered up with material; what

941 would you do about it?

A. You would get into trouble from the safety end of it. The guards would write up a violation, which they do, and send that in and you have to give an explanation and dispose of the case by telling them what has been done.

Q. What would you do, then, to avoid being written up?

A. I would hand it over to the foreman of the stock division. They send them to me and I send them to him. That's his job.

Q. But you contact him if those aisles are not kept clear?

A. I do, but that's his own responsibility. I have seen the time when the aisles have been so congested that the Army Inspection would kick about it. But the main responsibility for it is the stock division, for not having the stock in the right place.

Q. Whose responsibility is it in your department for seeing that the proper safety measures are carried out?

A. Well, they have safety inspectors come around, the safety engineer. There's one man, Mr. Taylor, in charge of all safety for the whole place.

Q. If you saw a worker or a foreman following an unsafe process, in your opinion, what would you do?

A. I would stop.

Q. And your foreman would do the same thing?

942 A. Oh, yes.

Q. And your assistant foreman?

A. Yes.

Q. You are familiar with the safety procedures that have been approved for the Packard Company?

A. Yes, everybody is, the workers as well.

Q. Is it your responsibility to see that the tools and fixtures are properly maintained?

Trial Examiner Jaffee: I am going to exclude that, because it has already been covered.

One of the purposes of direct examination, cross-examination, redirect examination and recross-examination is to narrow the scope of the questions down. The fact that a person answers differently on redirect examination does not mean you can go over the same ground to the same extent you did before. There must be a narrowing down process; otherwise, everybody would insist upon having the last word and we would be here forever.

Mr. Dahling: Is the ruling of the Examiner that I am not to continue along this line of testimony?

Trial Examiner Jaffee: No, I am merely indicating that you are going over this ground to the same extent you did before.

Q. (By Mr. Dahling): Mr. Turnbull, in your redirect

examination by Mr. Nelson, you listed your duties
943 and responsibilities as a general foreman. Did you, in your answer to the questions given to you by Mr. Nelson, include all of your duties and responsibilities?

A. As far as I know, I did.

Q. And that was a complete list of all the duties and responsibilities that you have a general foreman; that is, the statements you made in answer to Mr. Nelson's questions?

A. Except in little trivial matters, Mr. Dahling, such as a man coming to get a pass to go out to lunch. I could give you the synopsis of my night's work if that would satisfy you better.

Q. Well, let us get down to this question of trivial matters. The matter of maintaining quality, is that trivial?

A. I believe that question was answered before.

Q. Did you answer that question in connection with Mr. Nelson's examination?

A. Well, I don't know for sure.

Q. If I say there was no answer to that question, to my recollection, would you say that was right?

A. If you say so. I didn't read the transcript over and I don't remember every question asked me.

Q. But you still take the position that you did outline all your duties and responsibilities in response to Mr. Nelson's questions?

944 A. The main ones, yes.

Mr. Dahling: That being the case, Mr. Trial Examiner, I do not see that there is anything for me to do but continue in the way I have been examining.

Trial Examiner Jaffee: Yes, and he also said it varies from day to day to some extent.

Mr. Dahling: That is true, but what we are interested in doing is getting a competent picture of what is done from day to day.

Trial Examiner Jaffee: I know, but you are not going to get it by going over the same questions.

Mr. Dahling: There has been a steady effort on the part of the witnesses to minimize the responsibilities and duties for the purpose of this particular case, and I think it

is very proper cross-examination to show that this witness in response to questions, has been doing that and that he has not testified in full as to his exact duties and responsibilities.

Trial Examiner Jaffee: I know, but cross-examination—rather, recross-examination—should be recross-examination and not simply cross.

Mr. Dahling: Well, of course, that brings us to this point, if you care to make a ruling?

Trial Examiner Jaffee: There is nothing to rule on. I am simply making an observation, apparently without effect.

945

Mr. Dahling: Mr. Examiner, I think it is now practically one o'clock. I am perfectly willing to discuss with my associate here this matter during the recess hour. I do not know what the result will be; it may be that we will not take up as much time. But if you desire us to continue along, I am perfectly willing to continue.

Trial Examiner Jaffee: Well, obviously, the main purpose in this, as in all hearings, is to get all the relevant facts. I cannot disregard them entirely, nor did I mean by anything I may have said, to indicate that the fault, if that it be, is on the Company's part. I think Mr. Nelson had tended to confuse direct examination with redirect examination. So that without attempting to assess the blame as between one side or the other, I think both sides ought to bear in mind some of the things I said earlier. I suggest we leave a little room for matters of which we can take official notice, a little room in which the Board can apply the facts themselves and a little room for such native intelligence, which we are supposed at least to possess.

With that observation, we will come back at 2:15.

(At 1 o'clock P. M., a recess was taken until the hour of 2:15 P. M.)

946

After Recess.

(Whereupon, pursuant to recess, the hearing was resumed at 2:15 P. M.)

Trial Examiner Jaffee: Are we ready to proceed, gentlemen?

Mr. Dahling: May I proceed?

Trial Examiner Jaffee: Yes.

ROBERT F. TURNBULL

resumed the witness stand, was examined and testified further as follows:

Recross-Examination (Continued).

Q. (By Mr. Dahling): Mr. Turnbull, in addition to the duties and responsibilities that you testified you had, on Mr. Nelson's redirect examination, do you also have all of the duties and responsibilities that you testified to on my direct examination?

A. Yes, as I know, yes.

Q. Now, you stated that the stewards made certain trivial complaints, I think you called them, and you did not characterize as a trivial matter the giving of passes, did you?

A. Yes.

Q. And you consider that trivial? That giving of a pass for a man to get out of your department?

A. A pass to go home, yes; it is a usual occurrence
947 right through any day. You get maybe half a dozen in a day.

Q. And that is a pass to go home?

A. Yes.

Q. Do you decide whether a man should or should not go home?

A. Well, if you didn't, then the steward would come to you just the same, and perhaps the man would go out to lunch at lunch time and not come back after lunch, so you may as well let him go and have it done with.

Q. And the steward would come and what would he do?

A. He would complain to you. The man would complain to the steward that you refused to give him a pass and the steward would come to you and you would give him the reason for it and you would have an argument on

your hands with the steward. Then when it came to lunch time the man would go anyway.

Q. You would have an argument on your hands with the steward and to get rid of the argument you just give the pass, is that it?

A. Yes.

Q. Whether you thought the pass should be given or not?

A. Yes, you might as well.

Q. How about a pass to go from one part of the plant to another part of the plant?

948 A. Well, an inter-divisional pass—there are only certain people that can give them. For instance, I can give them but up to just lately I did not have that privilege myself. When a man goes from one division to another, if it is any sort of a restricted area then that man's signature—whoever signs the pass—his signature must be identified. Most of those signatures are from the superintendent when they go to different divisions.

Q. You say you now have the authority to do that?

A. Yes, because I had occasion to send a man over to "D" Division and he went over there and they turned him back. He went over there two or three times and they turned him back. I went and reported that to the superintendent, that this man I was sending over for certain items couldn't get them and I couldn't get the man out of the department, so he said that he would have my name put on the list, and he had my name put on the list so I can do that.

Q. So giving these passes is at least considered by the Company as being a fairly important matter?

A. Sending a man into a different division, yes. A restricted area pass, I can't give that now. The D. S. M. Department, I can't even walk in there.

Q. That is because of army and navy rules, is it not?

A. Regulations, yes.

949 Q. These passes you can give, you have to decide, do you not, as to whether they should be given?

A. Oh, yes, if something is needed in a hurry and we have to send a man, yes.

Q. Mr. Turnbull, were you not recently issued a book or pamphlet on time studies?

A. Yes.

Q. Have you studied that document?

A. It's about three or four months ago now. It doesn't bother us to any extent because the foreman doesn't come in on that; that's between the Company and the Union men.

Q. Did you ever have a time study in your particular department?

A. No, it isn't being done on the night shift, to my knowledge.

Q. You are on the night shift?

A. Yes.

Q. How long have you been on the night shift?

A. Since the 18th of March, 1944.

Q. Has there been a time study in your department?

A. Not on nights.

Q. Has there been on days?

A. It's just going that process now.

Q. Prior to that time, in 1944, did you ever have any time studies during that time?

250 A. Yes, a time study man came around and put an estimated time study on the jobs.

Q. You had to have your department in order, did you not, and prepare for that time study job?

A. No, he comes whenever he is ready.

Q. And he selects the man?

A. Yes.

Q. You have nothing to do with that at all?

A. Oh, no.

Q. Is that the instruction in your time book?

A. Of course, at that time there was no time study book out. This time study book has just come out since then.

Q. Is that matter covered in your present time study book?

A. Yes.

Q. What are you supposed to do as set forth in this time study book?

A. We don't have anything to do with that at all.

Q. Now, you have nothing to do even with the setting, the conditions under which the time study is made?

A. No, that's their job and they attend to it themselves.

Q. When you say "they attend to it" who do you mean?

A. The time study men.

Q. And the time study men are experienced men?

951 A. To the best of my knowledge they are; they are appointed by the Company.

Q. What is the purpose of this time study?

A. Well, I would imagine it is to operate the department or the factory just as near as you can, as cheap as they can and to know what an article is going to cost them to make.

Q. Does it have anything to do with the efficiency of the operation?

A. The efficiency of the department or the efficiency of an operation is based upon that time study.

Q. As a matter of fact, is it not a part of the time study to do away with lost motion?

A. Absolutely, that's their job.

Q. Where a man can do a job using two movements of his hand rather than four, they instruct him in the use of the two-hand movement?

A. Yes.

Q. And the time study does that?

A. He does that and sets up the route sheet accordingly.

Q. As a matter of fact, the purpose also is to make the work easier for the men, is it not, so it is less fatiguing?

A. Yes.

Q. And they are supposed to instruct them how to do the work properly, with the least effort?

952 A. Well, they don't do much instructing to the men. They just put that down in the route sheet, as to what the operation should be, and the foremen have to accept that.

Q. Of course, if they time a job and you find that the worker does not complain, of course, there is no reason for you to complain?

A. No.

Q. If the worker complains, what happens?

A. He would complain to his steward.

Q. One of the purposes is so that there should be no lost motion, is that it?

A. Yes.

Q. Every job has a proper and improper way of accomplishment, is that correct?

A. Oh, yes.

Q. And the purpose of the Company is to pick out the proper way to do the job?

A. Yes.

Trial Examiner Jaffee: I suppose, more accurately one should say there is one accurate way and perhaps innumerable improper ways.

Mr. Dahling: I will accept your statement, Mr. Examiner. I think the Examiner suggested something about sweeping north or south here some time in the hearing previously. It might be proper or it might be improper
953 to sweep north and south, isn't that true?

The Witness: Yes.

Q. (By Mr. Dahling): There may be a proper way of sweeping?

A. Yes.

Q. In other words, if the floor was grooved you would sweep down the groove instead of across it?

A. Yes.

Q. And there is a proper way of handling the broom in sweeping to prevent dust?

A. Yes.

Q. The Company goes into all these matters and reduces the operations to the simplest and most efficient form, does it not?

A. On the manufacturing end but not on the sweeping end. I don't think they have route sheets and time studies on that.

Trial Examiner Jaffee: They do not indicate so many sweeping motions per minute.

The Witness: Not with our help they couldn't.

Q. (By Mr. Dahling): As a boy I worked in a store and I was instructed that when I used a broom that I should not throw it up in the air like this (indicating) and throw up a lot of dust, that would be right, wouldn't it?

A. Yes.

954 Q. So that there would be a proper way to use a broom?

A. Maybe so.

Q. If you were sweeping out a pit that was in a road it would be better to sweep lengthwise than across, wouldn't it?

A. I imagine so.

Q. So there is something about proper sweeping?

A. Oh, yes.

Trial Examiner Jaffee: May I observe, since I originally mentioned the sweeping subject, that while I agree with everything counsel indicates, I used the example in connection with the use, proper or not, of the word "policy."

Mr. Dahling: I think there was some mention made of policy in that connection, Mr. Examiner. I was simply using this as an example of the fact that the Company in all of these operations tries to bring them about with less effort on the part of people and in a most efficient manner.

Q. (By Mr. Dahling): You are a member of the UAW-CIO, I believe you so testified?

A. Yes.

Q. Did you ever go out on strike?

A. No.

955 Q. Has the UAW gone out on strike at Packard's since you have been there?

A. I don't remember an official strike at Packard's.

Q. But there haven been work stoppages?

A. Yes.

Q. And men walked off their jobs?

A. Yes.

Q. Would you call them "wild-cat strikes"?

A. Yes.

Q. By the way, Mr. Turnbull, we have been discussing stewards, union stewards. If the Foreman's Association of America is given collective bargaining rights, would you have stewards?

A. No, we try to at the present time have what we call representatives in each division. It would have a different setup, of course, to what a steward is. A steward in other words, has a—the CIO has a steward in every department.

We have been trying to keep one man in a division. In other words, that one man would look after any little thing that was needed in that division.

Q. Then you would have a division steward and not a chief steward, such as in the UAW?

A. We have less people and we wouldn't need all that.

Q. You feel you would not need a chief steward?

956 A. No.

Q. But this division steward would be the counterpart of the steward you would have. He would be the counterpart of the present division steward in the CIO?

A. We call him a representative and his duties would not be anything like what a steward has.

Q. What would be his duties?

A. I don't expect that we will get a lot of grievances amongst foremen as you do amongst a bunch of men in a shop, and we don't call them grievances like that—

Q. What would be his duties?

A. To take care of any little incident that might come up and contact the manager or division manager in that division if it were found necessary to represent the member involved.

Q. That is about what the division steward of the CIO does at the present time, isn't it?

A. That is part of what he does, yes.

Q. Do you wear your Union emblem in the shop?

A. Yes.

Q. And do the other foremen, also?

A. Yes.

Q. And do you also in your athletic events have special emblems on your costumes, your athletic costumes and shirts?

957 A. Yes, we have a team and a bowling league and we have a shirt with F. A. A. badge right across the back.

Q. And you also wear those shirts at the plant at times?

A. I don't know, come to think of it, I have seen one or two of them, but I don't wear one myself.

Mr. Dahling: That is all, Mr. Examiner.

Q. (By Mr. Karasick): Mr. Turnbull, when a special assignment man is needed in a department who calls him?

A. Well, the foreman on the line would call him if he had a difficulty—it wouldn't matter which of us called him. In other words, if we ran into a difficult situation a special assignment man would be around there and either the foreman or the general foreman would contact him or an inspection man might contact him.

Q. Someone from inspection might call him?

A. They would just as we would.

Q. Were special assignment men called from a central headquarters where they were located?

A. We have one for our department, a special.

Q. Where is he located in your department?

A. Well, he is just on the floor, that is all, just like anybody else on the floor. If he needs to write these notes he comes in—as a matter of fact, the one we have types his own—if he couldn't he would get the
958 clerk to type the notes for him or to leave any reports.

Q. Then he does not have an office?

A. No, he doesn't have an office, he works under another special assignment man in "K" Division, who I think has an office over there where two or three work out of. Then again another might work out of the division manager's office. We have two that go around the plant and get the parts if they are not coming right, and they work out of the night work manager's department.

Q. Who is the immediate superior or supervisor of the special assignment men or are there immediate supervision?

A. They come under the division manager, in our division.

Q. In your division?

A. Yes.

Q. Do you know if that is true in other sections of the plant, as well?

A. Yes, they work out of the division manager's office, practically speaking.

Q. Does that mean they are under the instructions and subject to the supervision of the district manager?

A. Oh, yes.

Trial Examiner Jaffee: Did you say district manager?

Mr. Karasick: I meant the division manager.

959 Q. (By Mr. Karasick): Now, let me see if I understand clearly what this special assignment is. When he goes into a department to rectify any trouble that has occurred there, to trace it down, is he in charge of that department for that specific purpose?

A. No, he doesn't take charge of the department.

Q. I mean, is he in charge of the department for the purpose of getting this trouble rectified? That is, whatever instructions he gives are to be followed by anyone in that department?

A. Well, yes, I would say it in that way.

Q. Is that correct?

A. If he came and looked at a job and found something wrong, he might say, "Give me a couple of those parts and I will take them to get inspection on them," and he would walk away and we would probably work along with the job and maybe leave out some of those to one side.

Q. If he finds any trouble, would he tell you as general foreman or the assistant foreman or the employees that you should operate this way until we get this trouble fixed?

A. Yes.

Q. And you are of necessity supposed to follow those instructions he gives you, to that extent, is that correct?

960 A. Yes, you would do that.

Q. Does he make any recommendations with respect to the general production or maintenance employees?

A. No.

Q. That is, does he initiate queries in the way a general foreman or assistant foreman would?

A. No, if a certain part is really wrong he may issue a query about that part and send it through the inspection or through the division manager. In other words, a report on what he had found out.

Q. Is there a special assignment man to each department or does the special assignment have a number of departments, or does the practice vary, according to the size and complexity of the particular operations?

A. Most of them work from the division manager's office and they go to any department under that division manager.

Q. You spoke of one special assignment man who formerly had worked at the Rolls Royce plant who acted as substitute for one of the superintendents?

A. Yes.

Q. Was that true only of this particular special assignment man or—strike it. Is that true only with respect to the particular special assignment you referred to or have other special assignment men, on occasions, substi-

961 tuted for superintendents in the plant?

A. That's the only one I know of. The other one, Tom Pawlowski, he has now gone back to take charge of a department, to be a foreman of the Shipping Department, I believe.

Q. To be a foreman?

A. Yes, to be a foreman.

Q. You testified, I believe, that if the aisles were cluttered up in the department, the guards would write a violation slip?

A. Yes.

Q. Against whom would that violation slip be written?

A. They send them there—

Q. (Interposing): Well, who would be charged with the violation?

A. They send it in to the manager of the department, and the only ones I have seen have been on my desk when I come in at night. They come through the plant mailing system in an envelope and I just take them and give them to the stock foreman; it is his job.

Q. What is it a violation of?

A. Plant rules, the aisles are supposed to be cleared at all times.

Q. When a man walks in and asks for a pass for time off, is the amount of time he gets covered in the

962 amount of time he is allotted during the year that he is entitled to?

A. No, we can allow them fourteen days and then they are allowed three days without a pass of any sort. Over

three days absent time, automatically their card is pulled, so that three days plus fourteen would make seventeen, but they can come in the next month and get seventeen more.

Q. I understand, but if a man asks for, say, a half a day off, is that time counted as part of the time off he is to have, that is, of the total time?

A. No.

Q. When you clear an employee from the rolls, or recommend that that be done, do you mean that you clear him from the rolls of your particular department or clear him from the payrolls of the entire Company, or recommend that action?

A. That's done through the employment office. We do not have anything to do with that. We can't take him off our payroll until that's been accepted by the time office and they forward it on to the front office.

Q. Can you recommend that an employee be discharged outright, not from your department alone but from the whole Company?

A. Well, yes, we could do that.

963 Q. And the ultimate action depends, as you have explained, upon the employment department?

A. Yes.

Trial Examiner Jaffee: Have you ever done it?

The Witness: I don't remember doing it. It would be much harder for us to do. To get the thing over with we clear or recommend that they be cleared from our department rolls, but if we would complain about them and ask for a complete discharge, we would have to fight harder to get rid of the man, you see.

Q. Are there any women who are employed in the four classifications that are set forth in the petition?

A. There are a few women. I do not know just how many, but they are assistant forewomen.

Q. Are there any women, foremen, or foreladies?

A. No, not that I know of.

Q. General foreladies?

A. No.

Q. Special assignment women?

A. No.

Q. The only ones you know of are assistant forewoman?

A. Yes.

Q. Do you know how many there are?

A. Roughly guessing, I would say about six, and some of those have just been put on a week or two ago.

964 Q. In your discussion you broke up grievances into two classifications which you called trivial on the one hand, and serious on the other?

A. Yes.

Q. It is my understanding of the trivial grievances that practically all of them are settled at the first stage of the grievance procedure, that is, with you as a general foreman?

A. Ninety-nine per cent are.

Q. Of the serious grievances, what percentage of them do you successfully handle in the first stage?

A. Very few; in fact, hardly any of them at all; you can't.

Q. Do you mean those are invariably appealed and they go through the regular form of grievance procedure and are, therefore, out of your hands?

A. Yes.

Mr. Karasick: I have no further questions.

Trial Examiner Jaffee: Any further redirect examination?

Mr. Nelson: I believe not.

Trial Examiner Jaffee: Any further recross-examination?

Mr. Dahling: I think I have just a couple of questions.

965 **Recross-Examination.**

Q. (By Mr. Dahling): Mr. Turnbull, we will say you had a worker who was habitually absent, a habitual absentee, what would you do about that?

A. We would write that up as a query, check his time record, or get the girl to do it, for a matter of two or three months, and then we would write a query giving that man twenty-four hours' notice.

Q. Then I believe you testified you would give the man a copy of the query?

A. Yes.

Q. And give the steward a copy of the query?

A. Yes.

Q. Then, we will say the steward agrees to the giving of the twenty-four hours' notice.

A. As a rule he won't.

Q. Well, we will say he does.

A. You don't get him to do it, though.

Q. It never has happened?

A. Never, unless a man hasn't paid his dues and they want to get rid of him.

Q. But you have never had a case of a worker, male or female, where the steward agreed to a twenty-four hours' notice?

A. Oh, I might have had one, I couldn't remember. You get so many absentees. The usual procedure is to write that once and the Personnel Department calls them
966 in and warns them and the steward also warns them and the second time it happens we take that through the same procedure and the Personnel Department and the steward will agree.

Q. You say the Personnel Department and the steward will agree?

A. Yes.

Q. But you start the query in the first place, do you not?

A. Yes.

Q. All right, you issue this query in which you give this person twenty-four hours' notice; what do you do with the copies of the query?

A. We send one copy to the person involved, one to the steward, one to the general foreman of the department now, and one to the Labor Relations man in your division, or the division personnel man, and one to the personnel man of the division, five copies.

967 Q. (By Mr. Dahling) All right, now then, the steward agrees with you that the person should be cleared from the roll and actually signs the query. What happens after that?

A. If the man is satisfied and wants to take that, he is all done, he is out.

Q. He is automatically cleared from the rolls?

A. Yes, but if he wants to appeal, he can still come back to his district steward, and even if the district steward agrees, he can go to the committee and if they agree, he can still go into personnel and perhaps get put back to work.

Q. What is the usual situation there?

A. Well, practically any of the men I got rid of in one place usually turned up someplace else in the plant.

Q. But they were cleared from your rolls?

A. Yes, cleared from our rolls and put to work in some other part.

Q. If the steward agrees to it, unless the man appeals to the division steward or the plant committees—both of those, by the way, are instruments of the CIO Union, are they not?

A. Yes.

Q. And then it goes through automatically?

A. Yes.

Mr. Dahling: That is all.

968 Trial Examiner Jaffee: Are there any further questions of this witness?

Mr. Nelson: No further questions.

Q. (By Trial Examiner Jaffee) Mr. Turnbull, I suppose it is fair to say, isn't it, that if you did not take care of the little grievances, pretty soon you would have big ones?

A. Oh, yes.

Q. And hence to a degree, when you do take care of the little ones, you therefore, to a degree, take care of possible big ones?

A. Yes.

Q. Is that right?

A. Yes.

Q. You testified, I think, that if an assistant foreman was not satisfactory to you, you would tell the superintendent that the assistant was no good?

A. Yes.

Q. Suppose the Foreman's Association was recognized by the Company and this particular assistant foreman was a member and you are a member, would you still tell the superintendent the same thing?

A. The first procedure we would do under that, Mr. Examiner, and have done, by the way, if we found a man that is laying down on his job or losing time or not carrying out the job correctly, we call the Executive
969 Board together and call that man out.

Q. You are talking about your Union now?

A. Yes, and he is warned. Often it happens that the man we have designated as representative will call that man to one side and line him up and tell him that if he doesn't do the job that we have no time for him and we cannot stand for a man being irresponsible and we do not intend to respect any member in a position like that at all. If a man is not doing his job correctly, then he is not entitled to be on supervision and we will not back that man up. That is understood by every member of our Association and we have done that throughout and will continue to do it as long as we ever can.

Q. You have used the phrase "If a man is irresponsible." Let me turn that around and ask you to whom he is irresponsible? To whom is he supposed to be responsible?

A. To his Employer, to do his job properly, and if he doesn't, we don't want him at all.

Q. Let me ask you my original question. If this particular assistant foreman was not satisfactory to you, would you or would you not tell your superintendent he was no good even if he was a member of your Union?

A. Absolutely I would tell him that he was no good.

Q. Do you feel that the fact that he is a member of the Union would affect your judgment of the matter or
970 the issue or your action in the matter?

A. No, if a man is no good, he is no good and we do not want him any more than anybody else does. It would hurt us as an Association if we backed him up.

Q. However, you might lose a member?

A. We are better off without that sort of member.

Mr. Nelson: You might get a good man in his place.

Q. (By Trial Examiner Jaffee) At the opening of this morning's session you were asked several questions with reference to seniority as applicable to a particular situation, seniority being used in that connection apparently

as meaning length of service. Would discharges be based on length of service, that is to say, all kinds of discharges?

A. You mean for infringement of the rules or something like that?

Q. Yes, would that be based on length of service?

A. No, if he is discharged for an infringement of some rule, seniority would not make any difference.

Q. Then, what kind of discharges do you mean when you say discharges would be dependent upon seniority or length of service?

A. Discharges for cutbacks and drops in production and layoffs.

Q. Assistant foremen are generally recruited from the rank and file?

971 A. Yes.

Q. And foremen and general foremen also are recruited from the rank and file?

A. Yes.

Q. I suppose you mean by that that the foremen are recruited from assistant foremen?

A. Yes, they work their way up gradually.

Q. So that it starts at the rank and file in the beginning?

A. Yes, I know I did, that way.

Q. If the Foreman's Association of America was recognized and you had these representatives that you spoke about, have you any idea about how many it would be necessary to have in the plant, approximately?

A. There are seven divisions and we would have one on either division on either shift and that is fourteen all told, seven representatives on the night and seven on the day shift and that would give us fourteen.

Q. There are two shifts, are there?

A. Yes.

Q. To the extent that a special assignment man comes into your department and works on a particular job which he has been called in on, to what extent does he supervise the men in your department? Does he supervise so much of your department as is necessary to carry out that

972 job for that time?

A. He would stand and watch the job proceed until he saw it was working correctly.

Q. Suppose he needed two or three of your rank and file men to help him in connection with what he was doing. What would he do?

A. It would be a matter of cooperation with the foreman on the job. He would be with him and explain what the job was and the foreman would tell him to work. I don't think he might ask him himself as an order, he might ask them but not give them an order to work, in other words.

Q. Have you recommended promotions for assistant foremen?

A. No.

Q. Or demotions?

A. No.

Q. Why not?

A. Well, I haven't had occasion to. It is only just the last cutback that they took these three off in the department at all. That was the only time I ever had any demotions.

Q. Well, do you know whether or not general foremen or foremen recommend promotions or demotions for assistant foremen?

A. I am not definitely sure on it. I have an idea that some of them do. I am not definitely sure of a
973 definite case.

Q. How is that usually handled, if you know?

A. The superintendent or division manager have the choice of who is put on. If they put two on in my department I was not consulted who they were. In fact, they put three on and I was told that they are making these fellows up to assistant foremen and I was told by the superintendent. He and the assistant manager discussed that together.

Q. By the way, is the special assignment man's job considered a promotion from an ordinary job of foreman?

A. No, it is not considered that way at all. You may have a foreman that would be sick or something like that and his job is perhaps a little too much strain for the time being. Then, they will for the time being put him on a special assignment where it is perhaps a little less worry about the number of people he has to supervise. If they

have some special place or some special job there they will phone him and tell him he is going to be detailed for this job. It is no promotion and never was considered as one.

Q. I suppose that he has less administrative work than you have?

A. Yes, much less.

Q. On the whole, a special assignment man is more
974 of a technical expert than most other general foremen or foremen?

A. Yes, if he cannot carry that job through, I have seen them let him go for that one reason. In other words, if they do not make a go as a trouble shooter, they are not liable to last very long.

Trial Examiner Jaffee: Are there any further questions of this witness?

Mr. Dahling: Yes, I have a couple of questions.

Trial Examiner Jaffee: All right.

Q. (By Mr. Dahling) If you found an assistant foreman laying down on the job and wasn't doing his job—to whom would you first report that?

A. I would go right after the man himself.

Q. After you went after the man himself, would you and this foreman, this assistant foreman—If he was a member of the Foreman's Association of America, what would you do then?

A. Mr. Dahling, the Foreman's Association of America does not enter into the picture. If a man doesn't do his job he doesn't have a job, in my opinion, any place.

Q. What did you say about taking the matter up with the committee?

A. That often would occur. It has often been brought to our attention that a man was losing time or fall-
975 ing down, it has even been called to my attention by the division manager or the superintendent who will call me and tell me about it, tell me that they were going to take the man off if he doesn't improve. Then we take after him.

Q. Suppose you discovered it and instigated the matter?

A. I wouldn't bother with any committee. If I decided he was no good he would be no good.

Q. Suppose a majority of the Union disagreed and said he was.

A. I would still fire him.

Q. Even if the majority of the Union disagreed?

A. If he was no good to me I wouldn't keep him. There is no use having a man there if he cannot do his job. It is only fair to the Company to do that. If he was no good I would fire him.

Mr. Dahling: That is all.

Q. (By Mr. Nelson) When you say you would fire him, now, you mean you would make your recommendations in the regular way?

A. I would recommend up to the superintendent and the division manager that the man was not capable of his job.

Q. And you would stand by your recommendation?

A. Absolutely I would stand by it.

Mr. Nelson: That is all.

Trial Examiner Jaffee: That appears to be all, Mr. Turnbull. The witness is excused.

976

(Witness excused.)

Mr. Nelson: I call Mr. James Wilkins.

JAMES R. WILKINS,

a witness called by and on behalf of the Petitioner, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Nelson) Your name?

A. James R. Wilkins.

Q. Your address?

A. 5059 Kensington, Detroit.

Q. You are presently employed at the Packard Motor Car Company?

A. Yes.

Q. In what capacity?

A. General foreman.

Q. When did you go to work for the Packard Motor Car Company?

A. September 8, 1909.

Q. In what line of work?

A. As a major part assembler.

Q. Had you had previous mechanical experience or training?

A. No, only as a chauffeur.

Q. How long had you acted as a chauffeur?

A. Five and one-half years.

977 Q. How long did you work as a production worker?

A. In the neighborhood of between four and five months.

Q. Then what happened?

A. I became what they call a straw boss.

Q. That was the foreman of the lowest rank?

A. That is right.

Q. In the department where you had been working or some other department?

A. No, in the department where I was working.

Q. That would be in what year?

A. That would be in 1909 and 1910.

Q. Have you been a foreman at the Packard Plant ever since that time, practically speaking?

A. No, I haven't.

Q. You have not?

A. No, there was a short period in there where I asked for a change from the major assembly I was working on, to the motor assembly and then there was about six months in that time where I was just working as an assembler again.

Mr. Donovan: Will you fix the year, Mr. Nelson?

Mr. Nelson: Yes, I was going to ask that.

Q. (By Mr. Nelson) What year did that take place?

A. 1910.

Q. That was shortly after you became a foreman, then?

A. That was out of a straw boss into the motor assembly.

978 Q. Yes. You say there was about six months there that you were a production worker?

A. Yes.

Q. Were you in the motor department at that time?

A. I was.

Q. After you went into the motor department some six months afterwards, you became a straw boss?

A. The same thing happened there after six months, I became a straw boss again.

Q. How many men did you have under you?

A. About 15.

Q. How long did you remain straw boss in the motor division?

A. It was between the Fall of 1913 and 1914.

Q. What happened then?

A. I was taken from the motor repair as straw boss down to the finished car assembly and I was put in as assistant foreman.

Q. How many men did you have under you then?

A. About 60.

Q. What were you doing?

A. They were changing pistons in motors and noisy starters, rear axles, transmissions and rattles in the bodies, squeaks in bodies.

Q. You had 60 men there and you were an assistant foreman?

979 A. Yes.

Trial Examiner Jaffee: Was that something different from a straw boss?

The Witness: Well, it's practically the same duties.

Q. (By Mr. Nelson) Does one of them rank any higher than the other? That is, when you became an assistant foreman, was there any promotion there, either in rank or pay?

A. No, I worked for the same pay, I will say, pretty close to six months before I was changed to a different rate.

Q. What I am getting at is this, is a straw boss and assistant foreman just about the same thing?

A. There's not very much difference.

Q. Well, which is the higher grade even in that slight difference?

A. Assistant foreman.

Q. Did he get more money?

A. Sometimes he did and sometimes he didn't.

Q. Did he have more authority?

A. There was very little difference.

Q. Did he have more people under him?

A. I would say the job you was handling would answer that.

Q. It would be the importance of the job you were handling that determined which he was?

980 A. That's correct.

Trial Examiner Jaffee: Mr. Nelson, do you claim there is some difference today?

Mr. Nelson: No, there are no straw bosses today; they are all foremen, assistant foremen, general foremen and special assignment men.

Q. (By Mr. Nelson) That is correct, is it not, Mr. Wilkins?

A. That's right.

Q. In other words, the straw boss has been done away with?

A. We don't hear it any more.

Q. How long has it been?

A. Well, as I say, the latter part of 1913.

Q. You continued, then, as an assistant foreman in the motor division for how long?

A. Well, from 1910 to the latter end of 1913.

Q. Then what happened?

A. Then I was put in as a foreman. I went in as assistant foreman, I should say, after.

Q. And from assistant foreman you went to what?

A. As a foreman.

Q. In what year, if you remember?

A. I would say that was in the latter end of 1914 or 1915.

Q. Somewhere in there?

A. Yes.

981 Q. Did you get a raise in pay that reflected the additional designation?

A. Yes, I think I did.

Q. Did you continue in the motor division?

A. Well, it was the entire car, the motor, rear axles, transmission, body, everything in general, trim, paint and so on.

Q. What was it, a trouble division?

A. That's right, defects in the car.

Q. Either discovered in the factory or discovered by the customer?

A. Oh, no, on the road test.

Q. And it came into your division?

A. That's right.

Q. With the designation of trouble?

A. That's right.

Q. And that was your job?

A. That's right.

Q. I mean by that, it was your job to put the car in a saleable shape and useable shape?

A. Yes, sir.

Q. Now, you are a foreman. How many men did you have under you as a foreman?

A. Well, it run between 100 and 125.

Q. Did you have the same 60 men or so and then
982 these additional ones besides?

A. Yes, sir.

Q. And in what department?

A. That's what they call the repair department. I just forgot the letters they used for them at that time and then it was the assembly line that was added to my duties.

Q. From a foreman did you advance in rank?

A. Yes, in 1918, the latter part, I did.

Q. To what rank?

A. To general foreman.

Q. Under you were how many men at that time?

A. Oh, it was around 150.

Q. Did you receive a raise in pay again?

A. Yes, I think I did.

Q. How long did you continue as a general foreman?

A. Well, there was two breaks. There was one in between 1919 and 1920. I was an assistant superintendent about six months.

Q. You mean of the whole plant?

A. No, just on assembly on the complete car and motor.

Mr. Donovan: What did you say, assistant superintendent?

The Witness: That's right.

Q. When you were not acting as assistant superintendent, you were continuing in this trouble division over some 150 men, approximately?

983 A. Yes.

Q. You said there were two breaks. What is the second break?

A. In 1920 or 1921, when we had that depression, they set men back from their classification, from general foreman to foreman and from assistant superintendents to general foremen.

Mr. Donovan: Will you take that a litfle slower, please? I cannot keep track of it.

Mr. Nelson: He said in the depression of 1921 they set men back in their classifications, from general foremen to foremen and from foremen to assistant foremen and from assistant superintendents to general foremen, and so forth.

Q. (By Mr. Nelson) Everybody took a reclassification downward?

A. That's right, the ones that wasn't laid off entirely.

Q. And that included superintendents?

A. That's right.

Mr. Donovan: He is speaking about 1922?

Mr. Nelson: 1921, during the depression.

Q. (By Mr. Nelson) How long were you at that, or rather, how long were you in that classification to accommodate the circumstances due to the depression?

A. It was early in 1922 when I went back. When

984 I went back as a general foreman, it was in 1922 and it was some time—I continued as a general foreman ever since late in 1921 or 1922 up to the present time, outside of another small break.

Q. When did that occur?

A. That occurred, it was either April 11th or 12th in 1944.

Q. Was there some event that took place then?

A. That's right.

Q. What was it?

A. Well, it was one of those cases where the foremen—

the rank and file, the production went down and the rank and file was naturally taken off and they took off the general foremen and the foremen and assistant foremen.

Q. Was that at the point of conversion from the manufacture of cars to war manufacture?

A. No, that was the year before that, in April, 1940.

Q. What did you go down to on that occasion, or did you go down and out on that occasion?

A. Well, practically. I was on nights; in other words, before I went on nights, the superintendent or division manager called me in the office in the middle of the summer when I was going to get my vacation, the day before my vacation—

Mr. Donovan (Interposing): May we have his name, please?

985 The Witness: Mr. Finley, he called me in the office and he says, "Jim, when you come back you are going on nights," and I sat there and I never answered him and finally he sat there with me so long he got tired of looking at me and says, "What have you got to say about it?" I said, "What's the use of saying anything, I can't do anything about it anyway." I took my vacation and came back and I think it was a couple of days afterwards I think, and then I took full charge of the car assembly, that is, right up to the body loaded, repairs on the motors.

Q. (By Mr. Nelson) How many men did you have under your supervision then?

A. I would say roughly between 350 and 400; I might be 50 or 60 off on that guess.

Q. How long did you continue at that?

A. That lasted between eight and nine months.

Q. Then what happened?

A. Then, as I say, the sales of cars dropped off and that was when they were taking off the night crew and naturally, the Management calls in all the superintendents and managers and their plan was all set and everybody was different, the foremen and the general foremen was going around and saying what their setup was going to be and I didn't hear anything about my setup at all. So I waited

until I think it was the second last night and I
986 stopped Finley in the hallway and I says, "Oscar—"

Trial Examiner Jaffee: (Interposing) Do we need all this in detail, Mr. Nelson?

Mr. Nelson: No, I do not think we need it in this detail.

Q. (By Mr. Nelson) In the conversation, Mr. Witness, were you demoted or were you not?

A. Yes, I was.

Q. That was as a result of this conversation with Mr. Finley?

A. He told me—

Trial Examiner Jaffee: (Interposing) Was it the result of this conversation with Mr. Finley?

The Witness: He told me—

Trial Examiner Jaffee: (Interposing) No, was it the result of this conversation with Mr. Finley?

The Witness: Mr. Examiner, might I say, did you say what was the result?

Trial Examiner Jaffee: No, I said, was it the result of this conversation with Mr. Finley?

Mr. Nelson: Your demotion, in other words?

The Witness: No, it wasn't.

Q. (By Mr. Nelson) Were you demoted?

A. I was.

Q. And when?

987 A. Either April 11 or April 12, 1940.

Q. To what rank or position?

A. Well, he told when I asked him where I was in the organization, he told me I was—

Mr. Donovan: Just a minute. I ask that the witness be required to give responsive answers.

Mr. Nelson: He was going to tell it in the form Mr. Finley told him and I believe that is perfectly satisfactory.

Mr. Donovan: Well, it is not satisfactory to me, and I ask that the witness be required to give responsive answers to the question.

Trial Examiner Jaffee: I do not want to know what Mr. Finley told him unless it is the only way he can answer it.

Mr. Nelson: I believe that is why he was telling the conversation.

The Witness: That is true.

Trial Examiner Jaffee: Were you demoted?

The Witness: That's right and I was—

Trial Examiner Jaffee: (Interposing) Were you or were you not demoted?

The Witness: No.

Trial Examiner Jaffee: All right, go ahead.

The Witness: He told me I was going to be Mr. Durr's righthand man, with a substantial cut.

Q. (By Mr. Nelson) Who was Mr. Durr?

988 A. He was on days in the same position I was on at nights, general foreman.

Q. Did you go to work for Mr. Durrs?

A. No, I did not.

Q. Did Mr. Finley indicate the extent of the cut in the salary?

A. I wouldn't lower myself enough to ask him.

Mr. Donovan: I ask that be stricken out.

Trial Examiner Jaffee: It may be stricken.

Q. (By Mr. Nelson) I take it, he did not indicate it?

A. No, he did not.

Q. Did you continue working for the Packard Motor Company?

A. No, I did not.

Q. What did you do, go to work someplace else?

A. No.

Q. You remained unemployed for how long?

A. I was taken off the payroll the first of May.

Trial Examiner Jaffee: For how long?

The Witness: Until the 20th of June.

Q. (By Mr. Nelson) Then you went back to work for the Packard Motor Company?

A. That's right.

Q. In what capacity?

A. As motor assembly.

989 Q. As a maintenance and production worker and hourly rated, is that right?

A. That's right.

Q. How long did you continue as a production worker?

A. Five months.

Q. Then what happened? Did you go back as a foreman?

A. I did, as a general foreman.

Q. In what department?

A. In the YF Department.

Q. What department is that?

A. That's the marine motor assembly.

Q. The date you went back as a general foreman, if you please?

A. November 18, 1940.

Q. And you continued as a general foreman from that time until this?

A. Yes, sir.

Q. What is your wage or salary?

A. $330.00 a month.

Q. Is there a bonus or overtime?

A. There is.

Q. That makes the average about what?

A. It runs between 475, around 475 now, by working 50 hours a week.

Q. Will you tell us what you do in that department, what the operation is in that department?

990 A. Well, we build the motors, you might say, from A to Z.

Q. The motor department or division again?

A. That's right.

Q. How many men have you under you now?

A. When I left there a week ago last Monday there was 307 men.

Q. How many subordinate foremen?

A. I have got three foremen and four assistants.

Q. Mr. Wilkins, you are a member of the Foreman's Association of America, the Packard Chapter, are you not?

A. Yes.

Q. May I ask you whether you were a member of the old Local 918 of the UAW?

A. No, I was not.

Q. You did not become a member of that?

A. No.

Q. You have now, and for some time past, have been using the power and authority of a general foreman?

A. That's right.

Q. And for a great many years prior to 1934 to 1937 you were of the same rank, a general foreman, in the Packard Motor Car Company plant, were you not?

A. I would say before that, I would say from 1922 or 1918 or 1919 up to the present time.

991. Q. That you were a general foreman?

A. That's right.

Q. Mr. Wilkins, you are what could be called an old time foreman; that is, prior to organization of the production and maintenance workers?

A. That's right.

Q. You have had experience on both sides of the line, have you not?

A. Yes, sir.

Q. And at the Packard Motor Car Company?

A. Yes, sir.

Q. As an old time foreman, tell us something about your powers and your authority, what could you do, could you hire a man?

Trial Examiner Jaffee: At what time are you talking about?

Mr. Nelson: Prior to 1933 or 1934.

Trial Examiner Jaffee: You mean, at the time he was a general foreman?

Mr. Nelson: Yes.

Q. (By Mr. Nelson) When you were a general foreman?

A. There hasn't been very much change since I have been a general foreman, but there was considerable change before that.

Q. When did that change take place?

992 A. Oh, around 1913 or 1914, I would say there was some change took place there and then around about 1915 to 1917; that's in the employment office.

Q. Was there an employment office when you first went to Packard's?

A. No.

Q. Then there was an employment office established, is that right?

A. That's right.

Q. Do you remember what year that was?

A. No, I do not.

Q. What change came in your powers as a foreman with the establishment of the employment office?

A. Well, when I first—

Mr. Donovan: (Interposing) This is still in 1913 and 1914?

Mr. Karasick: I think he said he did not know the date.

Mr. Donovan: He said the change took place around 1913 and 1914.

Mr. Dahling: Mr. Examiner, this is very interesting, but I do not see how it is relevant at all to this particular case, going back to 1913, 1921, what took place at that time; that is some 30 years ago.

Trial Examiner Jaffee: We all know, of course, that
993 there has been over the years in mass production industries a degree of change, and I think that is what Mr. Nelson is going into.

Mr. Nelson: That is right, I am trying to get this witness to tell us what the differences are in being a foreman then and now as affected by the establishment of the employment office, organization of the production and maintenance workers, and other changes.

Trial Examiner Jaffee: Was this change back around 1913 and 1914?

The Witness: It was before that some time.

Trial Examiner Jaffee: All right.

Mr. Donovan: Mr. Trial Examiner, I object to the testimony now being gone into by Mr. Nelson because unless I am mistaken, and I do not believe I am, the witness testified that from 1933 to 1934 on, there was no particular change in his duties as general foreman. Then Mr. Nelson, still pressing for changes, got the testimony that there was a change in 1913 or 1914 involving the employment office. But the record, as it stands now, shows that there was no particular change since 1933 and 1934 in his duties as general foreman. So what we are going into now was sometime prior to that and having to do with the employment office, for some period between 1913 and 1914 and 1933, 1934.

Trial Examiner Jaffee: Sorry, Mr. Donovan, I
994 simply do not get your point.

Mr. Donovan: Mr. Nelson has expressed a desire to show there have been great changes and at the same time, I think, I know what he has in mind, the duties of the general foremen—that is another reason for the formation of the Foreman's Association of America. I do not see how he is going to do it through this witness, unless he changes his testimony. In his particular case there was no change in his duties from general foreman from 1933 and 1934 onward. We are now addressing ourselves to some period prior to that. The relevancy of which I do not see, as to what Mr. Nelson wants.

Trial Examiner Jaffee: The witness may answer.

Q. (By Mr. Nelson) You tell us, Mr. Wilkins.

A. As far back as when I was a straw boss I used to go out on the street and take a slip out of my book and hand it to a man and he would go in and he would be hired, he would be put on the Packard payroll.

Q. Did you fix his wages?

A. No—yes, I did. In other words, at that time the men used to work for 28 cents and 32 cents an hour and up as high as 40 cents an hour for real good motor builders.

Q. Did you fix the wages within those limits?

A. I set the rate on it.

Q. Then you not only hired him—

995 Trial Examiner Jaffee: (Interrupting) Do you mean within the range you were permitted?

The Witness: Yes.

Q. (By Mr. Nelson) Who was the judge as to whether the man was worth 28 cents, 35 cents or 40 cents?

A. The way we used to hire men at that time was we could go out there and they would be lined up 40 or 50 men. I would walk along and if the man was smart he would see us walking along and notice that we talked to one man and another man would approach us and know what kind of man we wanted.

Mr. Donovan: Will the witness please speak up? I cannot hear him.

The Witness: I said when we walked out in the line, we would ask a man if he was a motor repair man and the next man would hear the conversation between us that went on and he would say that he was a motor repair man. We would look that man over and nine chances out of ten, you wouldn't take him because you didn't like his makeup and the way he answered the question.

Trial Examiner Jaffee: He was probably a lawyer.

The Witness: He may be. Anyway, we used to ask him if he could read "mics" and what a bore and stroke of a motor was and what the pistons were placed—by the second question he would fall down. Then he would
996 go along and see a bright-looking fellow who would say, "I don't know anything about a motor but I am willing to work; give me a chance and I will make a good man for you." We used to make a lot of good men such as that, who were with us awhile. They would then be all right.

Q. You picked them yourself as foremen?

A. Absolutely, there was no medical examination at that time either.

Q. Except such as you gave them in the line there?

A. Yes.

Q. Now, could you fire that man?

A. Oh, yes.

Q. Could you discipline him if you didn't quite want to fire him?

A. Well—

Q. (Interposing) By that, could you lay him off two or three days and tell him, "You better not do that again, stay home two or three days and think it over." Could you do that at that time as a foreman?

A. No, that is nothing I have done very much of.

Q. Why?

A. I was more inclined to be the other way, and give a man a very good severe talking to.

Q. But you did give him that?

A. It was generally pretty rough, too, I think.

997 Q. You could fire him if you thought it was justifiable?

A. Absolutely.

Q. You said something about these bright young men coming in willing to work. Did you give them a process of training?

A. No.

Q. What did you do?

A. The system we used to have at that time was that we would have a certain amount of men that worked on the job for a reasonable length of time and as a foreman or straw boss you would know your men and you would take and put the new man with the older men. You would check up on him from time to time how the man was coming along and that would be the answer.

Q. You then made up your own mind as to whether he was worth being retained?

A. Yes.

Q. And as a foreman you made up your mind?

A. That is right.

Q. If he wasn't, could you let him go?

A. Absolutely without any argument.

Q. With anybody, is that right?

A. Well—

Q. I mean, did you have to refer to somebody higher in the Company, or did you do it yourself?

998 A. If the Examiner would like to listen to this, in 1914 or early in 1914 when I was put on as a straw boss I fired the employment manager's nephew and I also fired my boss' brother. That is the first day I was put on that job.

Mr. Donovan: And that was before the CIO was in the plant?

Mr. Nelson: That was before there was an employment office and so forth also.

Q. (By Mr. Nelson) Did you make those firings stick? Or did somebody come around and overrule you?

A. I am afraid that if I went into details it would be too much.

Q. Did the firing stick?

A. Absolutely it stuck.

Q. That is what I wanted to know.

A. Yes.

Q. As a foreman in the oldest days, could you do any purchasing, or did you do any buying or anything?

A. No, sir.

Q. You did no buying?

A. No, sir.

Q. Did you fix the schedule of your work? Did somebody above you fix the schedule?

A. No, that was handled—

Q. (Interposing) I am talking about the old time foremen.

999 A. That has all been handled through the same sales of cars, through the sales department.

Q. As a foreman, did you sit in the olden days with Management and talk things over? Did you have conversations with the factory superintendent—

Mr. Donovan: (Interposing) Just a minute. Do you mean did he do that as an individual or did he do it in a group or not?

Mr. Nelson: I mean as foreman. How high up the line did you confer about your work as a foreman?

Mr. Donovan: Mr. Examiner, I still ask the question be reframed. I do not know whether the question means the witness as an individual or not.

Mr. Nelson: It means as foreman. I said and put that in the question.

Mr. Donovan: As an individual foreman?

Mr. Nelson: In his work as a foreman, working for the Company. Not in your personal relations, Mr. Wilkins, or anything like that, but in doing your work as a foreman, did you confer with members or representatives of the Company?

The Witness: With the superintendent, yes.

Q. (By Mr. Nelson) On what subjects?

A. On the amount of men we had in a department at that time. There was no time study and no opera-

1000 tion sheet. It was up to the individual foreman while he ran his department. In other words, what efficiency he made.

Q. Is that true now?

A. Oh, no.

Q. What is the difference now?

Mr. Karasick: I object. We have gone into the difference now several days. We have been several days developing that and I think the record is overburdened with that sort of material.

Trial Examiner Jaffee: Can you answer that briefly?

The Witness: Well, in about three or four words.

Trial Examiner Jaffee: Go ahead.

The Witness: Operation sheets, time study controls, are the whole thing now, practically.

Mr. Nelson: Mr. Reporter, will you mark that as Petitioner's Exhibit 34?

(Thereupon the document above referred to was marked Petitioner's Exhibit 34 for identification.)

Q. (By Mr. Nelson) Mr. Wilkins, this Petitioner's Exhibit 34 offered just now, is offered to refresh your recollection. Was there an incident recently where you as general foreman received a complaint from one of your foremen? Will you answer that Yes or No?

A. Yes.

Q. Did this memorandum refresh your recollection as to that?

1001 A. Yes.

Q. Is that a memorandum made by you of that incident? Answer yes or no, did you make it?

A. Yes.

Q. And illustrating your powers then and now, tell me whether in this incident shown on Exhibit 34, your memorandum of it, you carried that complaint higher up—above you?

A. I did.

Mr. Donovan: May we see it?

Mr. Nelson: I will offer the memorandum so that counsel may have the advantage of knowing the substance of what it is. I offer it to counsel for examination.

Trial Examiner Jaffee: By the way, when was this?

Mr. Nelson: I believe it has a date on it.

The Witness: It has a date on it.

Mr. Nelson: In each of these I think there is a date.

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Mr. Nelson: Will you please mark these as Petitioner's Exhibits 35, 36, 37, 38 and 39?

(Thereupon the documents above referred to were marked Petitioner's Exhibits Nos. 35, 36, 37, 38 and 39 for identification.)

Trial Examiner Jaffee: At this time we will take a
1002 ten-minute recess.

(Recess.)

Trial Examiner Jaffee: The hearing is in order.

Q. (By Mr. Nelson) Exhibits 35, 36, 37, 38 and 39 are memoranda made by you of other incidents similar to Petitioner's Exhibit 34, is that right?

A. Yes.

Q. Now, as to your memorandum, Petitioner's Exhibit 34, it relates to a man by the name of George Klein in the YF department, who finally was made a foreman August 31, 1943, is that right?

A. That is right.

Q. Just in a word, what was Mr. Klein's complaint?

A. He was handling too many men on the classification as assistant foremen.

Mr. Dahling: Mr. Examiner, I object to the question and move that the answer be stricken as being immaterial and irrelevant. If this is a case of going into grievances again, why, of course, we will have to put in the testimony that we may think proper to counteract any effect it may have.

Mr. Nelson: I will briefly make—

Mr. Dahling: And also have time in which to investigate these cases.

Mr. Nelson: I might state briefly, Mr. Examiner, the
1003 showing on these exhibits—I would like to undertake briefly to ask three or four questions to get the continuity. I cannot do it by broken up questions and I am not able to make a showing on one or two questions.

Trial Examiner Jaffee: I gathered from what you said prior to the recess, Mr. Nelson, that you were not interested in the validity of the complaint or grievance and rather, in the fact that there were these complaints made, valid or not, following which certain action was taken.

Mr. Nelson: That is right. In other words, we are not offering them here to prove that Mr. Klein had a valid grievance, although obviously we think he did—what we want to show is what happens to the grievance and to the witness in connection with the grievance.

Trial Examiner Jaffee: Go ahead.

Q. (By Mr. Nelson) He was handling 190 to 220 men as assistant foremen for a period of two or three years, is that right?

Mr. Dahling: During what years?

Mr. Nelson: Prior to 1943, immediately prior to 1943. Isn't that correct, Mr. Wilson?

The Witness: It is in that neighborhood.

Q. (By Mr. Nelson) Did he bring that complaint to you as his general foreman?

A. Several times.

1004 Q. Did you take that complaint to the person above you in authority?

A. Yes.

Q. Did you take it there more than once?

A. Yes.

Q. Did you at that time get any relief or remedy for Mr. Klein whatsoever on your application?

A. No.

Q. Did Mr. Klein finally by-pass you and go directly to your superior with his own complaint?

A. Mr. Nelson, in order to answer that correctly—there was a night superintendent on at that time and he went to the night superintendent who in turn went to the day superintendent.

Q. He went around that way?

A. Yes.

Q. The night superintendent, if you were on nights, would be your superior as general foreman, if you were on nights?

A. Yes.

Q. But you were on days?

A. Yes.

Q. And he by-passed you and went to the night superintendent who went to the day superintendent?

A. Yes

Q. Did he then get relief?

1005 A. Sometime later he did.

Q. Through his own application?

A. Yes.

Q. Although you recommended repeatedly yourself as a general foreman?

A. Yes.

Mr. Nelson: This memorandum I offer simply as a memorandum, Mr. Examiner.

Mr. Dahling: May I ask, to save time, the name of the night superintendent?

Mr. Nelson: What was the name of the night superintendent at that time?

The Witness: Walter Ewener.

Q. (By Mr. Nelson) Now, who was the day superintendent at that time?

A. Mr. Benoit.

Q. Mr. Wilkins, to make the testimony as brief as possible, Exhibits 35, 36, 37, 38 and 39 are your memoranda of similar instances where you had complaints by foremen working for you and under your supervision for whom you made approaches and complaints to the next in authority above you and for whom you were unable to get any redress, is that correct?

A. That's right.

Q. Did these men in each of these instances, in effect,

1006 by-pass you finally and get relief for themselves?

A. There is one in there particularly that did.

Q. Well, did the others too?

A. No, the others, I kept talking to the superintendent and eventually he came through.

Q. And the memoranda shows the length of time it took you as general foreman to get these men relief where you got it for them?

A. That's right.

Mr. Dahling: May I interrupt, Mr. Nelson? May we have the names of each one of those men, the names of the superintendent and the dates on which these matters happened so that we may investigate these matters and put in such testimony on them as we feel is necessary?

Mr. Nelson: Yes, the main proposition. I desire to put in and then I will go over the details.

Q. (By Mr. Nelson) Now, Mr. Wilkins, you are a man of experience, an old time foreman, a modern foreman, will you tell us are these Exhibits 34 to 39, both inclusive, such instances as you desire to take up in collective manner through your association with the Company instead of having them for the way they have in these instances? In other words, are they instances which, as an association, you would reasonably be expected to handle promptly without the delay shown here?

1007 Mr. Donovan: Just a minute. I object to that, Mr. Examiner. I think that is a matter of argument, and certainly not a question to be answered by this witness.

Mr. Nelson: All right, I will put it this way.

Q. (By Mr. Nelson) Are these instances of complaints the kind you would like to take up collectively through the Association with the Company?

A. Yes.

Q. Briefly stated, what was William Wofford, what was his complaint?

A. His was on account of working on the CIO—in other words, he belonged to the CIO Union and acted as assistant foreman.

Q. And he wanted that remedied?

A. That's right.

Q. And you took it up for him?

A. I did.

Trial Examiner Jaffee: When was this?

The Witness: The dates is on the card.

Q. (By Mr. Nelson) In May of 1942?

A. Yes.

Q. Did you get remedy on that case?

A. Yes, I think I did, after a certain length of time.

Q. What length of time would you say?

A. I think it is on there.

1008 Q. May, 1942, to July, 1943, is that correct, if you remember?

A. I think that is.

Mr. Dahling: What did he want remedied?

Mr. Nelson: He wanted to be advanced to the rank of assistant foreman when he was assuming those duties but he was still in the CIO rank and file and it took him over a year to get it.

Trial Examiner Jaffee: Is that correct, Mr. Witness?

The Witness: Yes, sir.

Q. (By Mr. Nelson) Is that correct substantially?

A. Yes, sir.

Trial Examiner Jaffee: While we are talking about that particular case, did I understand your last answer to be he did get the advance?

The Witness: He did, after a long time.

Trial Examiner Jaffee: Did he remain in the CIO thereafter?

The Witness: No.

Q. (By Mr. Nelson) That is 14 months, approximately. Mr. Donovan suggests that you tell us to whom you talked for Mr. Wofford?

A. Mr. Benoit.

Q. What is his position?

A. Superintendent.

1009 Q. Now, Petitioner's Exhibit Number 36, Mr. Roy Habson, briefly what is his complaint?

Mr. Dahling: Will you give us the date?

Mr. Nelson: I can give it to you from the card, but I thought you would prefer to have it from the witness' recollection, if he can.

A. His is the same complaint as Wofford's, accounting to the CIO and acting as assistant foreman, working as an assistant foreman.

Q. (By Mr. Nelson) His complaint apparently was originated in July, 1941 and was remedied February 15, 1943. Those dates are approximate, I suppose?

A. Yes.

Q. Did you take up his complaint?

A. I did.

Q. More than once?

A. Yes, I did, several times.

Q. With whom?

A. With Mr. Benoit.

Q. Did you finally get Mr. Hobson's complaint remedied?

A. Yes.

Q. By being raised to the rank of assistant foreman?

A. That's right.

Q. And he got that correct pay for an assistant foreman?

A. That's right.

1010 Q. Exhibit 37 is the instance of Mr. Julius O. Smith. Is Mr. Smith a man you have known for a long time?

A. Mr. Smith has worked for me on and off for pretty near twenty years.

Q. What was his complaint?

A. His was practically the same complaint. It is right on that card there (indicating).

Q. That is, getting an hourly rate pay and working as an assistant foreman?

A. That's right.

Mr. Donovan: Witness, do you not remember anything except what is on those cards about these cases?

Mr. Nelson: Yes, if you want me to turn him loose; that is what I thought you did not want.

Mr. Donovan: Well, those cards are not very large and you only have six of them. I would like to see how those cases stand out in his own mind without these prepared cards.

Mr. Nelson: All right.

Q. (By Mr. Nelson) Tell us Mr. Smith's story. What happened, why he complained and to whom he went?

A. Mr. Reifel was the general manager and every time I talked to Mr. Reifel, why, he would pull out his black book and make a note in it—now, you are asking for it and I am giving it to you just as you are asking for

1011 it—and we would be up on the floor that Mr. Smith had charge of sometimes and, why, we would be

talking about the men and the operations, and I would say, "Mr. Reifel, when are we going to take care of Jules Smith?" He would just reach in his pocket and pull out his black book and make a note.

Q. (By Mr. Nelson) But did anything ever happen?

A. Nothing ever happened. Then I would go to Mr. Deislinger.

Q. What happened when you saw Mr. Deislinger?

A. Mr. Deislinger would look at me and that's about all I would get out of him. It went on and went on for the length of time there is on that card and nothing was done.

Q. What would you estimate about the length of time? That is one of the things Mr. Donovan wanted you to fix—that you would be talking about these two men?

A. It would be considerably over a year.

Q. What was Mr. Smith doing at that time, working as a maintenance and production worker?

A. Oh, no, he was handling around 100 men and getting around $1.26 an hour, I think it was.

Q. That is the production rate?

A. That's right.

Q. How was Mr. Smith feeling about it?

Mr. Donovan: Well now, I object to that.

Mr. Nelson: All right, I will withdraw that question.

1012 Q. (By Mr. Donovan) How often did Mr. Smith come to see you and take your time about this matter?

A. I couldn't answer that.

Q. Was it as often as that?

A. Oh, it absolutely was.

Q. I suppose you could tell us how Mr. Smith felt, too?

A. I could answer it in a couple of brief words.

Trial Examiner Jaffee: The next question, please.

Q. (By Mr. Nelson) Well, Mr. Smith finally got a remedy, didn't he?

A. He did.

Q. Petitioner's Exhibit-38, Mr. Robert Nolan. Do you remember that case?

A. I do.

Q. What was he doing?

A. He was handling the opposite shift to Mr. Smith on nights.

Q. And was being paid how?

A. He was being paid that $1.26 an hour.

Q. Was he performing the functions of an assistant foreman?

A. He was.

Q. Did he come to you about it?

A. Many times.

Q. What did you do about it?

1013 A. I went to the superintendent about it.

Q. The name of the superintendent, please?

A. Mrs. Benoit.

Q. Did you finally get Mr. Nolan a remedy?

A. He was eventually taken care of.

Q. Do you remember, of your own recollection, the period of time it took you to get the remedy?

A. No.

Q. The first date here is August, 1940, and he was made an assistant foreman on August 16, 1942, about two years. Is that your recollection of those circumstances?

A. Whatever is on those cards is correct.

Q. It is the correct date, approximately?

A. Yes.

Q. Petitioner's Exhibit Number 39, Mr. William Bradley. Is that, in substance, the same situation as you have told us about these other men?

A. No, that's a different situation, Mr. Nelson.

Q. What is the difference?

A. This man got suspicious of me and finally he asked me so many times about getting put on the right classification, finally he said he wanted to go to the Management itself.

Q. Did he?

A. He did.

Q. To whom did he go, if you know?

1014 A. Mr. Deislinger.

Q. And this went on approximately from June, 1941, until he was made a foreman? That is, in July, 1942, is that about the right period?

A. The dates on there, I think, are correct.

Mr. Dahling: He was made a foreman or an assistant foreman then?

Mr. Nelson: He was made a foreman.

Q. (By Mr. Nelson) Do you remember how many men he was supervising?

Mr. Donovan: When? Before or after?

Mr. Nelson: Before his recognition as such.

A. When he first went on, in 1940, he had about 88 men on the rolls.

Q. (By Mr. Nelson) Did that increase or decrease?

A. It went up as high as 200 on the day shift on the second floor and over a hundred on the third floor.

Mr. Nelson: I offer these in evidence and we offer the witness for cross examination.

Mr. Donovan: Mr. Trial Examiner, Mr. Dahling has some questions of the witness, but I wish to ask the witness, as I indicated a moment ago, a couple of questions about these cards which have been labeled and offered as Petitioner's Exhibits 34 to 39, inclusive.

Trial Examiner Jaffee: Yes, and I will withhold
1015 ruling on the introduction until you have completed questioning.

Mr. Nelson: May I ask just one question first?

Mr. Donovan: Yes.

Q. (By Mr. Nelson) Mr. Wilkins, are the kind of complaints shown on Exhibits 34 to 39, both inclusive, complaints that the old-time foremen would have remedied on their own authority and incidentally?

Mr. Donovan: I will object to the question as being purely speculative, calling for a conclusion, prejudicial to the Employer on the record and quite an improper question.

Mr. Nelson: All right, I will put it another way.

Q. (By Mr. Nelson) Could the old-time foreman have remedied these instances promptly with his own authority?

Mr. Donovan: I will object, because "old-time foreman" does not carry any definition to anybody. It is a phrase that might have a meaning as varied as witnesses are. We do not want that sort of thing in the record.

Mr. Nelson: Such as yours at the Packard Motor.

Trial Examiner Jaffee: The witness may answer what he could have done.

Q. (By Mr. Nelson) Could you have remedied these things?

A. Yes.

Mr. Nelson: Of course, I have raised this, as you know, because the Employers have been talking about that fabulous old man; rather like Rip Van Winkle.

1016 Q. (By Mr. Nelson) How far could you have come in point of time and remedied these situations?

Mr. Donovan: I will object to that, because he has testified they have all been remedied.

Mr. Nelson: No, I mean up to what year during the time he has been a foreman could he have remedied those by himself?

The Witness: I would say between 1915 and 1917.

Q. (By Mr. Nelson) Somewhere in there?

A. Yes.

Mr. Nelson: That is all, Mr. Donovan. I am sorry, I did not mean to interrupt you that long.

Mr. Donovan: Witness, I show you Petitioner's Exhibit 34, which your counsel has displayed to you and which you have handled and from which you testified after refreshing your recollection. You recall that, do you?

The Witness: I do.

Mr. Donovan: Who made that?

Trial Examiner Jaffee: That is, the exhibit itself?

Mr. Donovan: That is right. Who made this exhibit, Petitioner's Exhibit 34?

The Witness: I made it.

Mr. Donovan: It constitutes one, two, three, four, five, six, seven, eight, eight typewritten lines, does it not?

1017 The Witness: I never counted the lines.

Mr. Donovan: You do not think I am misrepresenting that to you?

The Witness: No.

Mr. Nelson: We will take your word for it, Mr. Donovan.

Mr. Donovan: Would you like to verify the fact?

The Witness: No.

Mr. Donovan: It does constitute eight typewritten lines, does it not, Mr. Wilkins?

The Witness: I said I never counted them; I don't dispute your word though.

Mr. Donovan: Is there any doubt about it in your mind?

The Witness: No.

Mr. Donovan: It is a card about four inches long and three inches wide, is it not?

The Witness: If you say so, yes.

Mr. Donovan: Well, you can see the card, can you not, Mr. Wilkins.

The Witness: Yes, sir.

Mr. Donovan: You have handled it?

The Witness: Yes, sir.

Mr. Donovan: And you say you put the writing on this card?

The Witness: I put the note the typewriting is from,
1018 the typewriting that is put on that card form.

Mr. Donovan: You mean, someone else typed the card?

The Witness: That's right.

Mr. Donovan: Who did?

The Witness: I don't just know who did.

Mr. Donovan: Pardon me?

The Witness: I am not certain who typed that card.

Mr. Donovan: Where was it done?

The Witness: It was done on the outside.

Mr. Donovan: What do you mean, done on the outside?

The Witness: It was done by, I think, one of my nieces.

Mr. Donovan: You mean, in your home?

The Witness: I don't know whether it was done in the place she works or where.

Mr. Donovan: You do not operate a typewriter yourself, of course, do you?

The Witness: No.

Mr. Donovan: When was it done?

The Witness: It was done right around, after that date on there.

Mr. Donovan: This is Mr. George Kline's case. Now, as near as you can remember, when was this prepared?

The Witness: The date is on the card.

Mr. Donovan: No, the only date on the card is con-
1019 tained in the one sentence, "He was made a foreman on August 3rd, 1943." That would not refresh your recollection as to when this card was made, would it?

The Witness: It was made after he was made a foreman, yes.

Mr. Donovan: How long after?

The Witness: I wouldn't know; I don't remember.

Mr. Donovan: And two years and nine months previously this so-called complaint you are talking about had existed and you did not make this memo up until after the expiration of that two years and nine months, is that right?

The Witness: That's right.

Mr. Donovan: When did you do the writing from which the typewritten copy was made?

The Witness: Just after he was made a foreman.

Mr. Donovan: Well, how long before it was typewritten up?

1020 The Witness: I would say in the course of a week.

Mr. Donovan: Why did you do that?

The Witness: I have always had a habit of keeping those notes on certain things that I was interested in.

Mr. Donovan: With reference to this Exhibit 35, 36, 37 and 38, were they all written up at about the same time by your niece who typewrote them for you?

The Witness: Yes.

Mr. Donovan: What use did you have in mind of making of these complaints as you have called them?

Mr. Nelson: He did not call them complaints, he called them memoranda.

Mr. Donovan: You did and he did but I don't know what you call them. They speak for themselves. They were referred to as complaints without remedy.

Mr. Nelson: What are on the paper are complaints, but the papers themselves are not a complaint.

Mr. Donovan: Why did you make all these written complaints and call them what you like, sometimes long after the complaint itself originated, as in the case of the George Kline case on Exhibit 34 and the names on the other Petitioner's Exhibit? Why did you prepare and

assemble all those complaints some time after August 31, 1943?

Trial Examiner Jaffee: I don't get it? Some time
1021 after August 31, 1943?

Mr. Donovan: That is the date he fixes for the writing of the complaints.

Trial Examiner Jaffee: All of them?

Mr. Donovan: No, he says in each case, but Exhibit 35—he says he wrote them all up about the same time. Exhibit 35 is July 26, 1943, which would be about thirty days difference; Exhibit 36 is February 15, 1943; Exhibit 37, March 27, 1944; Exhibit 38, August 15, 1942, is the day on here for the making of the man assistant foreman, and Exhibit 39 I am unable to inform the Trial Examiner about—it is a different sort of paper and I am going to get to that. I would like the witness to answer me why, regardless of the date, he prepared all these memoranda and assembled them and brought them in here.

The Witness: That is on account of Mr. Bradley accusing me of not being loyal and not doing my job.

Mr. Donovan: Mr. Bradley of Packard Motor Car Company?

The Witness: He is one of the men on the card there, Mr. William Bradley, he is a foreman under me now.

Mr. Donovan: You made these memoranda as matters of self protection then?

1022 The Witness: I did.

Mr. Donovan: How did you happen to bring them in here? How did you know anyone wanted them in here?

The Witness: Well, I didn't know anybody wanted them here. I had them made out and they were in my pocket. To be right about them, they were in my pocket ever since those cards were made out, ever since Mr. Bradley accused me of not trying to get his classification changed.

Mr. Donovan: And who asked you to bring these memoranda into court?

The Witness: Nobody.

Mr. Donovan: You just brought them?

The Witness: I did.

Mr. Donovan: And you are using them because you feel

that management was too slow in these cases in following your original recommendation?

The Witness: Yes, sir.

Mr. Donovan: And you do not agree with management's disinclination to act in these five cases as fast as you thought they should?

The Witness: No.

Mr. Donovan: As a matter of fact, you do not agree with management's disposition of your own status when you went to foreman, as you testified, to the rank
1023 and file? You don't think that it was right in your opinion, I believe, you said so on the stand, did you not?

A. No, I didn't say that.

Mr. Donovan: You think that management was all right in that action?

The Witness: No, I do not.

Mr. Donovan: I understood that from your testimony, Mr. Wilkins, that you are definitely complaining about that.

The Witness: I wasn't complaining about that at that time, but seeing that you are asking me, I don't think it was.

Mr. Donovan: You did not complain about it at the time but you regarded it as a complaint at that time?

The Witness: I didn't do anything about it because I knew there was no use.

Mr. Donovan: During the months, I believe, in 1940, approximately, when you were separated from the employment at the Packard Motor Car Company, were you out of a job?

The Witness: Yes.

Mr. Donovan: Did you make an attempt—you had been a foreman, hadn't you?

The Witness: Yes.

Mr. Donovan: You had been a worker at the Packard plant for some thirty-five years?

1024 The Witness: Thirty years at that time, about thirty-one years.

Mr. Donovan: Did you make any attempt to obtain employment elsewhere during that period?

The Witness: No, I was busy all the time.

Mr. Donovan: You wanted to go back to Packard's?

The Witness: Sure.

Mr. Donovan: You got back to Packard's?

The Witness: I did.

Mr. Donovan: How old were you when you went to Packard's the first time when you first went there?

The Witness: I am sixty-two now and I was about twenty-eight years old.

Mr. Donovan: How far along in school did you go when you were younger?

The Witness: The eighth grade.

Mr. Donovan: You stopped at the eighth grade?

The Witness: That is right.

Mr. Donovan: Mr. Examiner, we will object to the exhibits in question, 34 to 39 inclusive, on the ground they are irrelevant, incompetent and immaterial here.

Trial Examiner Jaffee: Well, I think they ought to come in if only for the reason that without them this transcript, to a certain extent, will be unintelligible.

1025 Mr. Dahling: Then, I move, Mr. Examiner, that the testimony of Mr. Wilkins with respect to all of these exhibits and the testimony in relation to them and his testimony as refreshed, as he said, by these exhibits, be stricken as irrelevant, incompetent and immaterial.

Trial Examiner Jaffee: No, I think they ought to be received and it is not for me to comment about the weight to be given the testimony and what bearing it has on the case, beyond the fact that I think they are admissible and they are accordingly received.

(The documents heretofore marked Petitioner's Exhibits 34, 35, 36, 37, 38 and 39 for identification were received in evidence.)

Mr. Dahling: May we proceed with our cross-examination?

Trial Examiner Jaffee: Yes.

Cross-Examination.

Q. (By Mr. Dahling): It was my understanding, Mr. Examiner, that Mr. Donovan was merely asking certain

questions about the exhibits and relative to their admission and that was not considered part of the main cross examination.

Mr. Nelson: I shall not raise any objection as to the technical matters as to who cross-examines. If I put a witness on the stand he will have to stand for cross-examination that the Company gives him.

1026 Q. (By Mr. Dahling): Mr. Wilkins, you stated that in 1940 you were made an assistant foreman in the division in which defects in cars were remedied and that you had 100 to 125 men under your supervision, that is correct, is it?

A. Yes.

Q. Was there any foreman in that department?

A. Yes, sir.

Q. Was there any other assistant foreman?

A. No.

Q. You just had a foreman and an assistant foreman and you were the assistant foreman?

A. Yes.

Q. In 1918, if my notes are correct, you were made a general foreman, is that correct?

A. That is the title I carried.

Q. All right. Were you or were you not a general foreman?

A. I was told I was.

Q. Did you carry out the duties of a general foreman?

A. Well, I had two departments.

Q. Does the foreman usually have more than one department?

A. Not as a rule.

Q. Did they in those days?

1027 A. No, I don't think so.

Q. Well, then, what did you mean by your statement "I was told I was a general foreman"? Why did you use "I was told I was a general foreman"?

A. Well, when I had been talking to the manager about it he would say, "You are the general foreman."

Q. You were given a raise in pay, I believe, at that time?

A. Yes.

Q. And you had 150 men under your supervision, is that right?

A. Around 125, I said.

Q. Well, how many other supervisors were there in that department at that time?

A. There were probably a couple of leaders, but I wouldn't even call them straw bosses.

Q. You had no assistant foremen?

A. No.

Q. And you had no foremen under you?

A. No.

Q. You ran the whole department then, didn't you?

A. That is right.

Q. That would be quite a responsibility, as I take it?

A. That is right.

Q. And you did a good job of it?

1028 Trial Examiner Jaffee: Will you keep your voice up, please, I cannot hear you?

Mr. Dahling: You did a good job of it?

Mr. Nelson: Well, we admit he did answer it?

The Witness: Yes.

Mr. Dahling: You did?

The Witness: Yes, sir.

Mr. Nelson: The Company admitted that by keeping him so long.

Mr. Dahling: I am not questioning that Mr. Wilkins is not a good foreman.

Mr. Nelson: He is and you can go right ahead now.

Q. (By Mr. Dahling): You were giving us a little ancient history, Mr. Wilkins, you went back to the year 1913; how many employees did Packard Motor Car Company have at that time?

A. I really don't know.

Q. Can you make any estimate?

A. No, if I did it would not be right.

Q. How many foremen did they have at that time?

A. I really don't know.

Q. How many general foremen did they have?

A. I don't know.

Q. How many cars did they produce?

A. In 1914 I know what they were trying to build.

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Vol. II

TRANSCRIPT OF RECORD

(Pages 681 to 1320)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 658

PACKARD MOTOR CAR COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 30, 1946.

CERTIORARI GRANTED DECEMBER 9, 1946.

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Case No. 7-C-1452.

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Respondent's Exhibit No. 1 2083
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1029 Q. You don't know how many they actually produced?

A. No, I do not.

Q. Did they have more than one department?

A. I don't just quite understand that, yes.

Q. You were in a department there, were you not, at that time?

A. Yes.

Q. In what department was that?

A. That was the finished car repair and the adjusting of cars.

Q. How many men worked in that department?

A. In the repair end of it there was between forty and fifty.

Q. Considering that as a department, were there other departments at that time?

A. Yes, there was.

Q. But you do not know how many?

A. No, I do not.

Q. Would you say there were eight or ten?

A. I think there would be about that many.

Q. And it might be as high as twenty?

A. I don't know that.

Q. Even if there were just eight or ten there would be a foreman in charge of each one of those departments?

A. I imagine so.

1030 Q. Did each one of those departments do the same type of work?

A. No.

Q. There was only one department doing your type of work?

A. Yes.

Q. And the other departments would do different types of work, is that correct?

A. That is right.

Q. So that if you say that the rate you paid in your department was a certain amount, that would be the rate that is paid the people who did the same type of work in your department in the plant, would it not?

A. Yes.

Q. And there might be other departments where they had a higher rate, isn't that right?

A. I imagine there was.

Q. Who fixed these rates?

A. Well, at that time they were fixed more or less through management.

Q. You say more or less through management; where did you get your instructions?

A. Well, you got it through the superintendent.

Q. The superintendent—did he give you a list of it showing the amount that you could pay these men?

1031 A. You had an expense account at that time.

Q. What do you mean "expense account"?

A. Well, your expense account—you had to show so much for labor and so much for tools.

Q. Who prepared that?

A. That was fixed up in the Cost Department.

Q. And you did not figure that up at all?

A. No, there was only one, I might say—if we stood within our expense account on our production or labor load we got five per cent on that and we got five per cent on our scrap and we got five per cent on our tool account.

Q. I don't understand just what you mean by that when you got five per cent?

A. We got five per cent of our wages.

Q. You were paid—

A. If we kept on it.

Q. You were paid in proportion to the expense account?

A. If we went over we would have to go and get our requisition and cost sheet and figure it out all the way through and make out the complete report on it.

Q. Will you explain that again? Were you paid on an hourly basis in those days?

A. No, on a salary.

Q. You would receive so much per month? Where

1032 does this five per cent come in?

A. Five per cent of our salary for certain accounts.

Q. You mean—

A. As a bonus.

Q. As a bonus?

A. Yes.

Q. In addition to your salary?

A. That is right.

Q. And that bonus was only given to you, however, if the cost of your department would not exceed the amount allotted to you by the higher management?

A. That is right.

Trial Examiner Jaffee: Just a minute. I gathered that it sort of worked the other way, if he cut below par he got the bonus.

The Witness: That is right.

Q. (By Mr. Dahling): If you cut below par by what percentage?

A. As a bonus—as long as you were below—there was a certain figure set and if you were below that, why you got your five per cent bonus.

Q. Or if you equalled it?

A. I think yes, if you equalled it.

Q. But if you went above it you would not get your five per cent bonus?

1033 A. No, you wouldn't.

Q. That was five per cent on cost?

Mr. Nelson: Not on the cost of the department but on the figure fixed by management as the amount allowed for that operation.

Mr. Dahling: I will take your statement.

Q. (By Mr. Dahling): It was fixed by the Company?

A. That is right.

Q. You testified to that?

A. Yes.

Q. And now the other five per cent was based upon scrap?

A. That is right.

Q. How did you determine that?

A. By the scrap tickets and the cost is put on the scrap ticket, whatever the part cost.

Q. And you were allowed so much in dollar value of scrap?

A. That is right.

Q. And if you exceeded that you did not get your five per cent bonus?

A. That is right.

Q. And what was the other five per cent, you mentioned a third, as I recall it?

A. I did,—on our tooling expense.

1034 Q. And you were allowed a certain tool expense for this particular department?

A. That is right.

Q. And if you did not requisition tools costing the amount you were allowed, you received an additional five per cent?

A. That is right.

Q. An additional five per cent bonus?

A. That is right.

Q. And that was on a monthly basis?

A. That is right.

Q. In addition to your regular monthly salary you could receive as much as fifteen per cent bonus every month?

A. That is right.

Q. By the way, these and other items like the cost of tools and the dollar value of scrap, were also fixed by the Company?

A. Yes. When you made a requisition out for a tool, the cost of that tool was put on that requisition.

Q. And that is true as far as your department is concerned? It was allowed a certain number of dollars in value of tools to be used?

A. That is right.

1035 Q. When you ordered one it was charged against the amount appropriated to your department?

A. That is right.

Q. And if at the end—this was also on a monthly basis?

A. Yes.

Q. And if at the end of the month you had not used up your monthly allotment of tools you received your five per cent bonus?

A. Yes.

Q. What happened if you used more than your monthly allotment of tools?

A. You did not get your bonus.

Q. And the same would result if you had more scrap than you were allowed?

A. That is right.

Q. And if the cost as fixed by the Company was greater than allowed?

A. Yes.

Q. Now, then, let's get to the hourly-rated people and the method of determining their compensation, who did that?

A. Well, that is a kind of hand-me-down. When you took charge of a department there was a certain rate in the department and you would be governed according
1036 ing to the expense account of yours.

Q. Was that a part of the expense account?

A. Yes.

Q. And it was listed in the expense account the amount you could pay for these people?

A. It showed so much for labor.

Q. That was just in a round figure?

A. Yes, if I remember right, it is a long time since I have seen one of those cards.

Q. You would then go out and recruit labor on the streets, as I take it?

A. I did manys the time.

Q. Was there any place around the Company where the people came and asked for work?

A. In the early days I don't think there was, I never seen any place.

Q. When you say "early days," what year would that be?

A. From 1909 up to 1912.

Q. And as foreman, you would go over the cost sheet or whatever you called it at that time, and note that you were allowed so much for labor and then you yourself would fix the amount that these people you had would be paid?

A. On certain jobs, yes.

Q. And the Company—rather, higher management,
1037 had nothing to do with that?

A. Oh, yes, they did.

Q. In other words, you couldn't go out and pay a man $1.00 an hour if you just felt like it, could you?

A. No.

Q. The Company and upper management fixed the amount you could pay per hour to these men?

A. That is right.

Trial Examiner Jaffee: You mean the maximum?

Mr. Dahling: Well, did they fix the amount, is that right?

The Witness: On this expense account, I am telling you about, when you were hiring your men and putting them on a certain classification, you had to be careful and not get too many on the high classifications, the high rate at that time—there was no such thing at that time as classification.

Q. (By Mr. Dahling): Who fixed the high rate?

A. I don't know who did.

Q. You didn't?

A. No.

Q. Then it must have been fixed by someone up in the line of supervision, I take it?

A. I imagine it was checked through all the manufacturers to see what rate they were paying.

1038 Q. Where did you get the rate from?

A. Well, it came from the time office.

Q. In other words, you were told by the time office how much you could pay to a man who did a certain type of work?

A. The rates, as a rule, were established in the department before you took over.

Q. Who established those rates?

A. I don't know.

Q. You did not establish them?

A. No.

Q. Well, you testified that you got them from the Time Department; did they give them to you?

A. No, I beg to differ, I didn't say that.

Q. I am sorry, I do not wish to misquote you. I just wanted to find out whether the rates were fixed out in the industry or by the Company, which would you say?

A. I would say they were fixed by the cost of the car.

Q. Who would determine the ratio of labor to the cost of the car?

A. The Accounting Department.

Q. And that was not done by you?

A. No.

Q. You hired a man at a rate which was fixed for your department?

1039 A. There was a rate in the department.

Q. The rate for your department?

A. That is right.

Q. Well, if you say you did not fix it was there anybody else in your department who fixed it?

A. You fixed the man's rate, the employee's rate, within the job they was working on.

Q. When you say "within the job they were working on," do you mean there was a range of some sort.

A. Yes.

Q. What was the range for the highest paid employees in your department?

A. I can speak of the time when I was first hired out at Packard's and it was 22 cents to 28 cents an hour.

Q. That would be the range?

A. That was the range at that time.

Q. What was it in 1913; that is the year that you say a change took place, as I have it here in my notes?

A. On that I would say it would run between 34 and 40 cents an hour.

Q. Did you have men in your department who received a higher hourly rate than some of the others?

A. No, it ran between 34 and 40 cents.

Q. They did all the same character of work?

A. No, there was some heavier and some lighter work.

1040 Q. In those days you had, as you stated, no classification and everyone in the department was paid within the same scale?

1041 A. As near as I can remember, yes.

Q. What was your highest figure, was it 48 cents an hour?

A. We used to have what we called the bridge assembly. That's the rear axle and that was very, very heavy work and those men used to get the highest rate.

Q. And you would get the lowest rate?

A. The job I started out on, the steering assembly, they would get 22 cents an hour.

Q. At that time, there was only one department in the plant that assembled the steering sections?

A. That's right.

Q. And only one department on the rear axle, I believe you called it?

A. That's right.

Q. Who, in those days—I am speaking now of just prior to 1931—who, in those days, was your superior, what was his title?

A. Walter Garner.

Q. What was his title?

A. Foreman.

Q. He was the foreman?

A. That's right.

Q. After you became a foreman did he continue supervising you?

A. No, he left and went to Buffalo.

1042 Q. And who was over Mr. Garner at this time?

A. Mr. Locker.

Q. Now, let us fix those dates as closely as we can.

A. That was in the latter end of 1909 and 1910.

Q. Those are the dates you have in mind when you are testifying as to these bonuses?

A. No, no. I don't know what the foremen got those days.

Q. Well, what dates are you using in that connection?

A. I am using, oh, from 1914 on up to 1929.

Q. From 1914 to 1929?

A. That's right.

Q. In 1929, the foremen still went out and hired people on the street?

A. No.

Q. Let us not get this confused. When did you go out and hire people on the street?

A. Between 1909 and 1913.

Q. You were a foreman at that time?

A. I used to go out and hire them when I was a straw boss.

Q. As a straw boss?

A. Yes.

Q. And after 1913 you did not do that?

A. I used to, maybe, take a man in the employment office after that and asked to have him put on the roll.

1043 Q. The company, however, in that period of time, between 1909 and 1913, was relatively small, was it not?

A. No, in 1926, 1927, 1928—

Q. (Interposing) No, I said between 1909 to 1913. I am sorry, I do not think you heard me correctly.

A. Oh, no, they wasn't very large.

Q. You knew most of the other straw bosses in the Company, did you?

A. No, I did not.

Q. Over straw bosses you had a foreman?

A. Yes.

Q. Who was over that foreman?

A. Mr. Locker.

Q. Who was over Mr. Locker?

A. I think Mr. Roberts.

Q. Mr. Locker's boss was what?

A. The superintendent.

Q. Was he superintendent of the entire plant, the entire company?

A. I don't know, he never told me.

Q. Do you recall whether there was more than one superintendent?

A. Not to my knowledge.

Q. You never had any contact with anyone but Mr. Locker as superintendent?

1044 A. I never had contact with him but once.

Q. Had there been any other superintendents you probably would have known of that fact, would you not?

A. No, I would not.

Q. Who was over Mr. Locker?

A. I think Mr. Roberts.

Q. Mr. Roberts' position was what?

A. Well, I really don't know.

Q. Did you have any division manager in those days?

A. I can't recall.

Q. Who was over Mr. Roberts?

A. Well, we had a man by the name of Mr. Virgel.

Q. What was his position?

A. I really don't know.

Q. Who was over Mr. Virgel?

A. There was two men there at the same time, Mr. Virgel and also Mister—I can't recall that name now—Mr. Stambrose was the name.

Q. Did—What did those two men do, Mr. Stambrose and Mr. Virgel?

A. I really don't know.

Q. All you know is that they were up the line of management, is that right?

A. I heard so.

Q. Was there a President of the Company at that time?

1045 A. Yes.

Q. What was his name?

A. Mr. Joy was with Packard for a short time after I was hired.

Q. That would be about what year?

A. 1909.

Q. Then who followed Mr. Joy?

A. Mr. McCauley.

Q. He is presently chairman of the Board, is he not?

A. I think so.

Mr. Dahling: How late did you plan on holding this hearing, Mr. Examiner?

Trial Examiner Jaffee: I do not like the use of that phrase "hold the hearing."

Mr. Dahling: You got a bit rough with us at the last session about being late.

Trial Examiner Jaffee: We made up some of the time we lost through being late. I think we will adjourn at about five o'clock. That is in about six minutes.

Q. (By Mr. Dahling) I believe you testified that in those days there was no medical examination of applicants for jobs?

A. I know I didn't get one.

Q. Do you think it is a good thing to have those examinations?

1046 A. Yes, I do.

Q. They had no employment office?

A. Not to my knowledge.

Q. Did you think that was advisable—not to have an employment office?

A. Well, at that time the Company was awful small. I don't think they could afford it.

Q. As the Company grew in size, they did have an employment office?

A. They did.

Q. And you think that is quite proper at this time, do you not?

A. I do.

Q. As a matter of fact, the Company could hardly operate at this time without an employment office, could it?

A. I don't know.

Q. Well, could you go out on the street today and get help for your departments?

A. I could, as an old foreman, yes.

Q. And you would think that would be the proper thing to do?

A. I don't know.

Q. In other words, you do not know whether the present system, through the employment office, is good or bad?

A. I am just judging by my own department.

1047 Q. The men in your department are sent to you on requisition now, are they not?

A. Yes.

Q. And you feel if you go out on the street you could pick up better men?

A. No, I didn't say that.

Q. Do those men, before they come to you, have to go through certain tests?

A. Yes, sir.

Q. Do you think those tests are advisable?

Mr. Nelson: I do not know what tests he means, Mr. Examiner.

Mr. Dahling: He said they have to go through certain tests.

Mr. Nelson: I do not know what difference it makes as to what he thinks.

Mr. Dahling: I think it has a very distinct bearing.

Mr. Nelson: What difference does it make what this witness thinks?

Mr. Dahling: This witness was put on to show that the situation in the old days was infinitely better because the foremen could do as they saw fit. If they did not like a man, they could fire him and handle their department in any way they desired, and they intend to show that some of these powers have been taken away, and, there-
1048 fore, they should be permitted to organize. There is no question but what that is their purpose.

Mr. Nelson: No, that is not correct.

Mr. Dahling: Mr. Examiner, may I continue? I think I have a right to state why I am asking these questions.

Mr. Nelson: Okay.

Mr. Dahling: I think we have a perfect right to ask this witness any questions which have any bearing or which may develop at all what that situation was back there, whether it was bad or worse or whether it was indifferent.

Trial Examiner Jaffee: I did not think and I do not now think Mr. Nelson's purpose was to indicate that the situation in the "good old days" was better than it is now. Just so there will be no question about it, I will ask Mr. Nelson now.

Mr. Nelson: Certainly not.

Mr. Dahling: They had more power then.

Mr. Nelson: Our position is not one of saying Management is better or worse. Our position is one of saying it is thus-and-so and therefore certain things happen. My brothers are constantly bringing that in on cross-examination of the witness, assuming one thing is better than another. We are attempting to say that we have entered into that in no way, not even indirectly. We just say that certain circumstances were different in the
1049 past than they are now, and whether they are better or worse we are unable to do anything about it. In other words, whenever we state a complaint or a circumstance, we do not necessarily state a complaint against the Company. If my brothers so construe it, they are ex-

ceedingly touchy about it. We do not imply anything like what they put on our shoulders.

Mr. Dahling: I can not just let those remarks just go unanswered. Every time they put a complaint in, it is for the express purpose of trying to throw something in the record against the Company.

Trial Examiner Jaffee: The next question, please.

Mr. Nelson: We do not stand on that position, Mr. Dahling.

Q. (By Mr. Dahling) You believe, do you not, Mr. Wilkins, that it is a good idea to have an employment office at the present time?

Trial Examiner Jaffee: I will exclude that in view of counsel's statement.

Q. (By Mr. Dahling) You feel, do you not, that it is a good idea to have various other facilities in the Company to assist the foremen in their duties, do you not?

Mr. Nelson: I believe that is objectionable, Mr. Examiner.

Trial Examiner Jaffee: He may answer that Yes or
1050 No, if he can.

The Witness: I don't know.

Q. (By Mr. Dahling) In other words, you do not know whether it is advisable to have a hospital in the plant?

Mr. Nelson: We raise no issue on that, Mr. Examiner.

Trial Examiner Jaffee: He may answer the question.

A. Yes.

Q. (By Mr. Dahling) And you think it is advisable also to have a master mechanic available?

Mr. Nelson: I do not see where that is material.

Trial Examiner Jaffee: He may answer.

A. Yes.

Q. (By Mr. Dahling) And do you think that there should be a process department?

Trial Examiner Jaffee: I will exclude that. If you want to combine several of those things in one general question, you may do so.

Mr. Nelson: Well, I do not know, Mr. Examiner, that our opinion of the details of Management would help the Board or anybody else, except where it impinges upon the obvious moral and legal rights of the foremen.

Trial Examiner Jaffee: Next question, please.

Q. (By Mr. Dahling) Mr. Wilkins, what is your department now?

A. It is the marine motors assembly and repairs
1051 and return motors from the field.

Q. In other words, you have three functions in your department; one, the assembly line for marine motors—

A. (Interposing) There is no line.

Q. There is no line?

A. No.

Q. How do they move along?

A. They don't move along.

Q. Then how do you assemble them, one by one?

A. They are assembled on a special stand until the motor is completed.

Q. And they stay on that stand until completed?

A. That's right.

Q. How many work on each one of these engines around this stand?

A. On the preliminary build-up, five.

Q. That is increased later on, is it?

A. No.

Q. They complete the engine?

A. They complete it on the preliminary build-up.

Q. What do you mean on the preliminary build-up?

A. That's the motor when it is first built up, before it goes down to the dynometer run.

Q. It is a complete motor when you get through with that run?

1052 A. Oh, no, it's brought back upstairs and disassembled and checked by Packard inspection and by the Navy.

Q. Then what happens?

A. Then, if it is all right, it is built up there and shipped. If not, and any parts are rejected, a new part is put in.

Q. In other words, before you run your first test, you have a complete motor?

A. We do.

Q. You test that, tear it down and find out if there are any defects and if not, you build it up with the same parts again, do you?

A. That's right.

Q. And that is all done on what you call this stand?

A. That's right.

Q. What are the other two jobs you have in your department?

A. We have motors sent back from the field.

Q. You have to rebuild those?

A. They have to be torn down and inspected by the Navy and the Engineering Department.

Q. Then what happens?

A. That—the parts that is okay will be built up with new parts and make the complete motors.

Q. Then what was the other job you have in your department?

1053 A. Engineering motors.

Q. I did not hear that.

A. Engineering motors.

Q. What do you do?

A. For experimental purposes the motors will be built up and put on the stand and tested and brought back. After they are run, maybe, oh, all the way from fifteen to thirty hours, they are torn down and completely checked by the Engineering Department and see how much wear we get.

Q. You put in whatever changes are needed in the motors and then you test the motors?

A. That's right.

Q. By the way, where are those motors used, do you know?

A. In the PT Boats.

Q. How many men are presently in your department?

A. When I left a week ago yesterday there was 307.

Q. Oh, you are not there now?

A. Well, I have been down here ever since.

Q. That is right. I had forgotten that.

Trial Examiner Jaffee: We will adjourn until tomorrow morning, beginning at nine-thirty.

(Whereupon, at 5 o'clock p. m., the hearing in the above-entitled matter was adjourned to 9:30 a. m., Wednesday, December 27, 1944.)

1054 Room 737, Federal Building,
Detroit, Michigan,
Wednesday, December 27, 1944.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 A. M.

Before:

Samuel H. Jaffee, Trial Examiner.

1056 PROCEEDINGS.

Trial Examiner Jaffee: Are you ready to proceed, gentlemen?

Mr. Dahling: Yes.

JAMES R. WILKINS

resumed the stand, was examined and testified further as follows:

Cross-Examination (Continued).

Q. (By Mr. Dahling) Mr. Wilkins, where were you born?

A. Canada.

Q. You are a naturalized citizen?

A. Yes.

Q. When did you come to the United States?

A. I came here the 9th day of September, 1909.

Q. Now, you testified with respect to certain men that you asked to be rated as assistant foremen. There were four or five of them. Do you recall that?

A. Yes.

Q. How long had those men worked for you before you made these requests?

A. One of them was requested before I took over that department, Mr. Smith.

Q. Mr. Smith? What is his full name?

A. Julius Smith.

Q. Who made the request?

1057 A. The foreman or the general foreman who had the department before I took it over.

Q. Were all the men working in the department when you took it over, the men you asked to be upgraded?

A. Yes, they were.

Q. How long had you known them—For instance, let's take Mr. Wofford. How long had you known him?

A. I never knew him until I took charge of the department.

Q. Just to get that date fixed here again, when did you take charge of the department?

A. November 18.

Q. What year?

A. 1940.

Q. And Roy Habson, how long had you known him?

A. Better than twenty years.

Q. Had he worked with you before?

A. Yes, he did.

Q. How long a period of time did he work with you?

A. Around 20 years.

Q. And Mr. Julius O. Smith, how long had you known him?

A. Fifteen or twenty years.

Q. Had he worked with you during that period of time?

A. On and off.

Q. And they were both good friends of yours, were they not?

1058 A. In a businesslike way, yes.

Q. Now, Mr. Robert Nolan, how long had you known him?

A. Since 1939.

Q. Mr. William Bradley?

A. I have known Mr. Bradley in June 20, 1940.

Q. Mr. Wilkins, how do you fix that date so accurately?

A. That is the day I came back to Packard after I was laid off.

Q. Were all of these men whose names I have mentioned working in the capacity in which they were working when you recommended their upgrading at the time you came to the department?

A. I just don't understand that.

Q. These men were all in the department in 1940 when you became general foreman, is that correct?

A. I think it is.

Q. And what jobs did they have at the time you came to the department?

A. Assembling motors.

Q. And they were just working on the—well, it is not a line, is it?

A. No.

Q. But they were just working on the standards on which you had the motors placed for assembly?

A. And bench work.

1059 Q. And bench work?

A. That's right.

Q. Did you increase their duties and responsibilities after you took over as general foreman?

A. As the department grew, yes.

Q. And the department first started as a very small department?

A. When I took it over we had 88 men.

Q. It increased to how many?

A. We went up to 564.

Q. Who gave these men you just mentioned increased responsibilities and duties?

A. I spoke to the Management and told them I needed more help. They asked me if I had anybody to suggest.

Q. What duties and responsibilities did you give these men?

A. Well, as assistant foremen.

Q. When you say assistant foremen what were their duties?

A. Well, that's to check the job and see it's done right and to see the men are properly placed.

Q. Did they continue to work on the motors?

A. Yes—which, you mean the foremen?

Q. Well, these men.

A. No, no, after they went on that job, no.

Q. And would you say that they became gang lead-

1060 ers at that time?

A. No.

Q. Did they have any right to initiate these queries or reports?

A. Well, I wouldn't say they did.

Q. They were members of the CIO?

A. They were.

Q. And they continued as members of the CIO?

A. They did, until such time as we got them changed.

Q. What is the usual method used in Packard for changing a man's classification? Have they any forms that they use for that purpose?

A. No, I have never seen any.

Q. All you would do would be to ask someone to change them?

A. As a general foreman, I would speak to the superintendent.

Q. You would not, however, prepare any request for a change of status or classification?

A. I never seen any.

Q. You have never seen one in connection with changing a worker from one classification to another?

A. Oh, no.

Q. No?

A. I am wrong, I mean yes.

1061 Q. But you say you have never seen one changing a worker to an assistant foreman?

A. No, sir.

Q. Now, you said you spoke to Mr. Reifel, who is Mr. Reifel?

A. At that time he was manager of the Y Division, the marine division.

Q. That is the division in which these marine motors, marine engines were made?

A. That's right.

Q. Who was Mr. Deislinger?

A. He was superintendent at that time.

Mr. Dahling: I will ask the Reporter to mark this document as Company's Exhibit Number 16.

(Thereupon the document referred to was marked for identification as Company's Exhibit Number 16.)

Q. (By Mr. Dahling) Mr. Wilkins, I show you a paper

marked Company's Exhibit 16, for identification, and ask you if your signature appears thereon?

A. Yes, sir.

Q. What is that paper?

A. That's a change in classification, form 547 to 114.

Q. You requested that change, did you?

A. I did.

Q. And it was approved?

1062 A. Mr. Deislinger's name is on there too.

Q. I asked you, was it approved and did it go through the change?

A. Yes, Mr. Deislinger was the manager.

Q. You changed this man's rate of pay also, or recommended the change, did you not?

A. No, I don't have anything to do with that at all. The classification takes care of that.

Q. That was ultimately taken care of? I mean, that was automatically taken care of?

A. That's right.

Q. By recommending this change in classification he actually did receive a change in his hourly rate?

A. That's right.

Mr. Nelson: There is no objection if it is material to anything. I do not know what it is offered to show. We admit that it is a record of the Company and it is signed by this witness. No doubt the man's classification was changed. Is that correct, Mr. Wilkins?

The Witness: Yes, that's the Union and the Company's agreement.

Mr. Karasick: Are you offering these at the present time?

Mr. Dahling: I am offering them in evidence, yes.

Trial Examiner Jaffee: It will be received.

1063 (The document heretofore marked Company's Exhibit No. 16 for identification was received in evidence.)

Q. (By Mr. Dahling) Company's Exhibit 16 is entitled "A request for change in classification." Was that initiated?

A. I just don't quite understand your question.

Q. You asked for this change in classification?

A. No. That is, in other words, if you move a man off a lower classification, why, you got to change his classification to the higher one. That is what that is, 547 classification is a lower rate than the 114 classification.

Q. So you moved this man to a lower—

A. (Interposing) I moved him to a higher classification.

Q. To a higher classification?

A. That is right.

Q. And in so doing—to make that effective, you had to execute this requested change of classification and send it through the regular channels?

A. That is a policy, yes.

Trial Examiner Jaffee: I am not clear on this point. Did you make the recommendation to begin with or is it a recommendation?

The Witness: No, it is not. It is a policy.

Trial Examiner Jaffee: Who started this thing about that particular change?

1064 The Witness: Well, as you move a man—

Trial Examiner Jaffee: (Interposing) I am talking about this particular one. Whose idea was it to begin with?

The Witness: It might start out from the assistant foreman—

Trial Examiner Jaffee: (Interposing) I am not interested in that. I am talking about this particular case. Whose idea was that?

The Witness: Well, on this particular case I couldn't answer that and be honest about it.

Trial Examiner Jaffee: Did you initiate that one?

The Witness: Well, I don't remember.

Trial Examiner Jaffee: You mean you do not know?

The Witness: I don't remember. The assistant foreman might come in and say, "I got to have another man on 114."

Trial Examiner Jaffee: Did he in this case?

The Witness: I don't remember.

Trial Examiner Jaffee: All right, proceed.

Q. (By Mr. Dahling) Mr. Wilkins, in an ordinary case,

if an assistant foreman came in and said that he had to have a man of a higher classification, as set forth in Company's Exhibit 16, what would you do about it?

A. Why, I would make—in other words, the first thing we do is get the steward in and we would satisfy
1065 both the foreman and the steward so that they would agree on changing this man according to his seniority and his ability.

Q. Who would pick the man in the first instance?

A. As I said, the steward and the foreman get together and they decide the man with the most seniority and then if the foreman says no, that man don't know that job and is not capable of doing that job we will talk it over and sometimes we will try the man on the job and somebody will say all right, give him a try and if he don't make good you can take him off. That is the way we generally operate on that.

Q. Then, if you get together with the steward on the man this form (indicating) requested change in classification, is prepared and signed by you as the general foreman?

A. That is right.

Q. In other words, in the case we have discussed here, you would be following out the recommendation of your assistant foreman?

A. That is right.

Q. And it is possible, of course, that you might disagree with him on that?

A. I just don't understand that question.

Q. The assistant foreman—suppose the assistant foreman asked for an additional man and you felt it was not necessary, what would you do?

A. I would certainly tell him. The first question I
1066 would ask him was, "How many men have you got down there?" He would tell me and right away I would figure out the time study and I would either tell him he needed one or he didn't need it, or that he needed three or whatever it might be.

Q. If you decided that he needed another man, you would sign the requested change for classification?

A. We would make that out, yes.

Q. And if you decided he did not need another man, you would tell him that he would have to get along on what he had?

A. That is right, according to the time.

Mr. Dahling: Mr. Reporter, will you mark that as Company's Exhibit 17 for identification?

(Thereupon the document above referred to was marked Company's Exhibit No. 17 for identification.)

Q. (By Mr. Dahling) Mr. Wilkins, I show you Company's Exhibit 17 for identification and ask you if your name appears thereon and whether or not that is your signature?

A. Yes.

Q. What is that paper?

A. That is an order for tools—a request.

Mr. Dahling: I offer Company's Exhibit 17 in evidence.

Trial Examiner Jaffee: It will be received.

(The document heretofore marked Company's Exhibit No. 17 for identification was received in evidence.)

1067 Q. (By Mr. Dahling) Mr. Wilkins, for the purpose of the record, will you explain just what Company Exhibit 17 is?

A. That is a T handle wrench.

Q. Well, is it a request that you be supplied a T handle wrench?

A. That's right.

Q. You needed that in connection with the assembly of the engines?

A. That's right.

Q. I see you signed first, apparently, and then there are other names under your signature?

A. Yes, Mr. Benoit.

Q. Mr. Benoit approved your request by signing it that way?

A. And the third name I can't make out. Mr. Deislinger is at the bottom. Mr. Bowen is on the side.

Q. And their signatures would be their approval of your request for those tools?

A. That's right.

Trial Examiner Jaffee: There are three signatures besides yours?

The Witness: There are four signatures besides mine.

Trial Examiner Jaffee: Three, besides yours?

The Witness: No, four.

Trial Examiner Jaffee: Oh, I see, there is one at the
1068 side. All right.

Q. (By Mr. Dahling) Did you initiate that request?

A. Yes, sir.

Q. You felt that the tools there were necessary for the work in your department?

A. Yes.

Q. What did you use those tools for?

A. Well, for tightening nuts.

Q. Was that to replace tools that had been worn out?

A. It might be and it might be for a new tool.

Q. You might have decided that a new tool would work better in your department and you made a request for it?

A. Yes.

Q. In other words, if you felt anything would improve the work in your department, you do not hesitate to make a recommendation that that be carried out?

A. Yes.

Q. And you have made such recommendations?

A. Yes.

Q. And they have been carried out?

A. Yes.

Trial Examiner Jaffee: What kind of tools were they?

The Witness: Well, for instance, pushers. There are splines in the crank shaft and splines on the hub; in other words, serrations.

1069 Trial Examiner Jaffee: What are serrations?

The Witness: That's to keep the hub from turning.

Trial Examiner Jaffee: Is that a large tool or a small one?

The Witness: That's quite a large tool.

Trial Examiner Jaffee: All right, go ahead.

The Witness: And special wrenches.

Mr. Dahling: I will ask the Reporter to mark this Company's Exhibit Number 18.

(Thereupon the document referred to was marked for identification as Company's Exhibit No. 18.)

Q. (By Mr. Dahling) Mr. Wilkins, I show you Company Exhibit 18, for identification, and ask you what it is.

A. This is a help requisition for two janitors.

Q. Is that signed by you?

A. Yes.

Q. Is that form, is that the form that would be used by you if you thought you needed more help in your department?

A. If your time study called for it, yes.

Q. And if some of your workers did not show up, would you send through a requisition of this character?

A. If you was down below your labor-load.

Q. I note that that was also approved by Mr. Benoit, and whose signature is that (indicating)?

A. That's Mr. Deislinger's.

1070 Q. Mr. Deislinger's?

A. Yes, that's right.

Q. And this help requisition was initiated by you in the first instance?

A. Yes, sir.

Q. And they approved your recommendation?

A. That's right.

Mr. Nelson: I have no objection.

Mr. Karasick: Mr. Examiner, in connection with the proffered exhibit, I would like to note that there has already been received in the record Company Exhibit Number 11, which is also a requisition for help, the same type as the document now being offered in evidence. I hardly see the necessity for having in the record a second copy of the same exhibit, particularly in view of the witness' testimony.

Mr. Nelson: That was for a replacement, as I noticed on the face of it, and I assumed that was the reason it was duplicated. I do not recall what the first one was for.

Trial Examiner Jaffee: Received.

(The document heretofore marked for identification as Company Exhibit No. 18 was received in evidence.)

Mr. Dahling: Will you mark this Company's Exhibit No. 19?

1071 (Thereupon the document above referred to was marked for identification as Company's Exhibit No. 19.)

Q. (By Mr. Dahling) Mr. Wilkins, I show you a card marked Company Exhibit 19, for identification, and ask you if your signature appears thereon, and what it is?

A. Yes, my signature appears on here and this is a clearance card.

Q. What is the purpose of the use of that card?

A. This card is when a man is leaving a department, either to be transferred or leaving the employment of the Company.

Q. Let us say that a man has been given a twenty-four hour notice and it goes through. Does he receive a card of that character?

A. (No response.)

Q. You do not understand my question?

A. Sorry, I didn't get it.

Q. Well, we will say a man is found incompetent and given a twenty-four hour notice, and the steward of the Union does not object and the man is cleared from the rolls. Is a card of this character prepared in that case?

A. Yes.

Q. Who prepares that card?

A. The foreman.

Q. What does the foreman do with the card after it

1072 is prepared?

A. The foreman either takes it over to the employment office or sends it over.

Q. Does he sometimes give it to the man to take over?

A. No, they stopped that about a month ago in our division.

Q. They previously gave it to the man himself?

A. They used to, yes.

Q. And he uses that card, I presume, to pick up what pay he has coming to him?

A. What the procedure is following that, I don't know.

Q. I notice on this card you gave the man a rating as to his ability and deportment. That is done by you or the foreman who makes out the card?

A. Yes.

Mr. Dahling: I offered the exhibit in evidence.

Trial Examiner Jaffee: I have not seen it yet.

Mr. Dahling: I am sorry I did not show you this one.

Trial Examiner Jaffee: It will be received in evidence.

(The document heretofore marked Company's Exhibit No. 19 for identification was received in evidence.)

Q. (By Mr. Dahling) Now, Mr. Wilkins, in addition to these forms, the order request and the requested change in classification and this clearance card, you from time
1073 to time are called upon to execute additional forms and reports, are you not?

A. What would the nature of them be?

Q. Would you be called upon at times to make out an indirect labor time report?

A. That is right.

Q. And also an expense requisition?

A. Yes.

Q. And that would be if you needed articles for your department?

A. File handles, brooms, rags.

Q. You also are sometimes called upon to sign a request for leave of absences?

A. Yes.

Q. And to send through tools and other things you use in your department for repairs?

A. Yes.

Q. And you make out a regular form and sign it in that connection?

A. Yes.

Q. And also in some cases you have to make out a special time allowance?

A. Yes.

Q. And the time exception report that I believe is in evidence here which you have heard about?

1074 A. Yes.

Q. And in addition to that there are perhaps other forms that you also sign?

A. There may be.

Q. Mr. Wilkins, have you, as foreman, also requested

changes in your department which would require an appropriation by the Company to make them?

A. Yes.

Q. And after you have made that recommendation, what is done?

A. Well, if Management or the superintendent or the manager thinks the change is all right, why, they will approve it.

Q. And if that change is made, it might cost a considerable sum of money?

A. Yes.

Q. And as I get your testimony, you have made such requests in your department?

A. Oh, yes.

Q. Can you recall the cost of some of the improvements you suggested that were put through?

A. No, I do not.

Q. But some of them might have cost the Company a considerable amount of money?

Trial Examiner Jaffee: I do not have any idea of
1075 what "considerable" means in this connection.

Q. (By Mr. Dahling) Would you say that some of the improvements might cost $2,000 or $3,000?

A. It might have been.

Q. It might be even higher than that?

A. I wouldn't know.

Q. You feel, of course, that it is part of your duties and responsibilities as a general foreman, to make these recommendations where you feel it will be helpful to the manufacturing of the product in your department?

A. Yes.

Q. Mr. Wilkins, what, if anything, did you have to do with the original laying out of a department that you might be called upon to supervise?

A. Nothing more than to suggest.

Q. When you say you make a suggestion, is that matter taken up with you at all?

A. Sometimes.

Q. And your ideas and opinions are solicited?

A. Yes.

Q. And, of course, when they are solicited, you tell them whether you think it will work or not, that is, their proposed layout?

A. Yes.

Mr. Dahling: Will you mark that as Company's Exhibit 20?

1076

(Thereupon the document above referred to was marked Company's Exhibit No. 20 for identification.)

Q. (By Mr. Dahling) I do not know whether you can see the extent of this or not, Mr. Wilkins, but I show you a blue print marked Company's Exhibit 20 for identification and ask you if your signature appears thereon and what it is.

A. Yes.

Q. And if you want to get down from the witness stand to examine it, you may.

A. Yes, that is my signature.

Q. What is this blue print?

A. That is the layout of the second floor of the motor assembly.

Q. That is one of your departments?

A. Yes.

Q. This was presented to you after it was prepared by some other department?

A. Well, that is the suggestion of mine, to be honest about it, that I suggested.

Q. That is, you suggested this layout which appears on this Exhibit Number 20 and your suggestion was carried out?

A. It was on that one, yes.

Q. It was on this one?

A. Yes.

1077

Q. And are you still operating substantially on this same layout?

A. Just about the same.

Q. How long ago was that that you made this recommendation?

A. Between four and six months ago.

Q. Between four and six months ago?

A. That's right.

Q. This is a very recent layout?

A. That's right.

Mr. Dahling: Mr. Examiner, would you care for one of these up on your desk?

Trial Examiner Jaffee: Very well.

Mr. Dahling: I will offer Exhibit 20 in evidence.

Mr. Karasick: No objection.

Mr. Nelson: I would like to ask the witness if he got any pay for this?

The Witness: That's the sad part about it.

Mr. Dahling: I did not get the passing remarks.

Mr. Nelson: It was an important one. I asked him if he got any pay for this stroke of genius here, and he said that's the sad part of it.

Q. (By Mr. Dahling) What is your average pay, Mr. Wilkins?

A. $338.00 a month for five days.

1078 Q. What has your average been on the fifty-hour basis that Packard is working on now?

A. Around four seventy-five.

Q. Between four seventy-five and five hundred?

A. That's right.

Q. Do you consider it part of your duty and part of your responsibility and something for which you are paid to make these recommendations to Management?

A. You can say that two ways, yes and no. When a man is capable of making improvements like that, why, the Company ought to consider him.

Q. In other words, you think that you should have an increase in salary?

A. Once in awhile, yes.

Q. Do you feel that you should be promoted out of the foreman's rank?

A. No.

Q. But just be recognized by a change in your pay schedule?

A. Once in awhile.

Trial Examiner Jaffee: Company Exhibit 20 is received in evidence.

(The document heretofore marked for identification as Company's Exhibit 20 was received in evidence.)

Q. (By Mr. Dahling) Tell me, Mr. Wilkins, would you say that the recommendations you made and which
1079 were incorporated in Exhibit 20 would in any way reduce the manpower that was necessary to be used by your department?

A. Yes, if a general foreman knows his business, naturally, you would place your operations where they belong.

Trial Examiner Jaffee: Will you read that answer, please?

(Answer read.)

Q. (By Mr. Dahling) Let me put it this way, you would feel that you would want to save and conserve manpower?

A. Yes, both ways—to work for your own interest and the Company's interest.

Q. These improvements that you suggested, might they also reduce costs?

A. Yes, they would.

Q. And bring about a greater efficiency?

A. Some.

Q. Now, will you tell us, Mr. Wilkins, and you can use this exhibit, will you point out what suggestions of yours were incorporated? What was your general idea in revamping the setup of your department?

A. Well, it's a long story. It started from the engineering department; they wanted more floor space on the third floor.

Q. So a layout had to be made for the third floor?

A. Part of the third floor had to be brought
1080 down to the second floor.

Q. Then you had a more or less synchronization or correlation of those operations?

A. It meant revamping the second floor.

Q. Now, you say that you assemble those engines on standards—

A. (Interposing) No, on stands.

Q. Stands, yes, I beg your pardon. Do they show on this exhibit?

A. Yes.

Q. Are these those stands? (Indicating.)

A. No, right over here. (Indicating.)

Q. You are now pointing to the top of the exhibit at rectangles marked "Motor Assembly Jack"?

A. That's right.

Q. There are a number of those extending along the top of the exhibit. That would be what direction?

A. That would be east.

Mr. Nelson: There are ten of them there, are there not? They are not all stands down here, are they? Those ten are the only ones there?

The Witness: There are some stands down there, Mr. Nelson.

Q. (By Mr. Dabling) You have marked in these rectangles at the top of the exhibit, which would be
1081 the east side of the building, "Motor Assembly Jack". That is the stand, is it?

A. That's right.

Q. There appears to be one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, sixteen at the top of the exhibit, and there are also others on the west side of the building, assembly jacks?

A. Yes.

Q. How many of these assembly jacks do you have on this floor, as shown by this Exhibit 20?

A. There are 19 now.

Q. 19 now?

A. Yes.

Q. What is the operation in assembling the engine by use of these assembly jacks? How do you build it up?

A. You put the crank case in the jack and bolt it down.

Q. That is the first operation?

A. That's right.

Q. From there on, what happens?

A. You assemble the crank shaft and connecting rods.

Q. Those operations are carried through by the workers in your department?

A. That's right.

Q. Not to carry this out too long, you gradually
1082 build up the engine until you have a completed engine standing on your jack?

A. That's right.

Q. The workers who do this job, are they capable of doing every operation required to build up that particular engine?

A. After they are at it awhile, yes.

Q. And their work, however, is broken down into just a series of operations that they carry on?

A. Not on the jacks.

Q. Your workers gradually get to the point where they can attach all these various parts?

A. Yes.

Q. These parts come in to you from where?

A. The machine shops, inspection.

Q. You have them on racks or trucks near these engines?

A. Yes.

Q. About how long are these engines, would you say?

A. Between six and seven feet.

Q. The engines themselves are between six and seven feet?

A. Yes.

Q. How many men work around an engine?

A. Five.

Q. You have so synchronized their work that they do not trip over each other, Mr. Wilkins?

A. That's right.

1083 Q. (By Mr. Dahling) Now, Mr. Wilkins, I am not going to go into great detail on these powers and duties and responsibilities that you may have as general foreman, but I would like to ask you about some of them. In the first instance, of course, you are responsible for the production and maintenance of production in your department?

A. Yes.

Q. You have to see you get the engines out on schedule?

A. That is what you are paid for.

Q. And likewise, you are responsible for the quality?

A. Yes.

Q. And if you found a workman was not doing a proper job, he would probably hear from you, wouldn't he?

A. Yes.

Q. And you have to correlate the work of the workers

under your supervision. In other words, you have to see that you have the right number of men around these jacks and that there are no duplication of work that each man knows his job and can do it. Is that correct?

A. Yes.

Q. I presume that you are constantly spending a great deal of your time on the floor here to see that they do the job right?

A. Yes.

Q. And if you should run into a breakdown or
1084 something of that sort, of course, you have to take action to see that that is remedied and get the proper departments in working on it and so forth?

A. Yes.

Q. And if there is any problem arising out of the day's work, you make a report and transmit that through to the next shift and the general foreman on the next shift?

A. We do not have any general foreman on the next shift.

Q. Then you have a foreman on the next shift?

A. Yes.

Q. And you would transmit that through to the foreman on the next shift?

A. Yes.

Q. By the way, what shift are you on, Mr. Wilkins?

A. I am on what they call a day shift.

Q. And that starts when?

A. Seven-thirty in the morning.

Q. Are there as many men on the night shift as there are on the day shift?

A. Not now.

Q. In other words, there has been a curtailment and a cutting down in the production necessarily?

A. Yes.

Q. And you are responsible for the safety and cleanliness of your particular section or department?

1085 A. Yes.

Q. And you see that it is kept clean too, don't you?

A. I always try to do my duties.

Q. Can you or can you not recommend increases in classifications for the workers which would bring about

an increase in pay? I believe that you testified that you could do that and that you can make such recommendations, is that right?

A. You can recommend a classification change?

Q. And that classification change might bring about or result in an increase of pay for the particular employees?

A. It just depends on whether it is a lower classification or a higher one.

Q. In other words, you can also demote a man or recommend his demotion?

A. According to the classifications.

Q. If you had more men of high classifications than you needed, but you needed some of a lower classification, would it be possible for you to recommend a demotion? Let me put it this way: We will say you are laying off men, your production has been cut down and you cannot use as many men in the higher classification as you have. Could you recommend that they be retained on at a lower classification?

A. Your operation sheet calls for so many men in each classification.

1086 Q. Well, we will say that your operation sheets are made up on the basis of producing a certain number of engines and then the number of engines to be produced is cut. That would result in your having too many in your department, would it not?

A. You are supposed to keep your labor-load right.

Q. In keeping your labor-load right, if you find you have too many men in your department, what do you do?

A. Naturally, you tell the superintendent that you have some men you have to get rid of.

Q. Then he would be supposed to transfer them out?

A. If he didn't tell him, he would tell you.

Mr. Nelson: Mr. Dahling, do you mind asking him where the operation sheet is made and where he gets it?

Mr. Dahling: I will be glad to.

Q. (By Mr. Dahling) You are talking about an operation sheet? Do you know where that comes from?

A. That comes from the planning department.

Q. And they are the ones that—that is the department which plans the work?

A. That is right.

Q. And what is this operation sheet?

A. Well, it is a sheet telling you how many parts have to be used on that certain operation or the whole motor.

Q. And it sets up—

1087 A. (Interposing) The tools and everything.

Q. It sets up in detail the various processes to be followed?

A. And the classification, that is right.

Q. And the classification of workers who are to do this work?

A. That is right.

Q. In other words, it is a detailed breakdown of the operations and processes which are necessary to build up this engine?

A. That is right.

Mr. Nelson: Including the tools.

Mr. Dahling: And it includes the tools that would be needed?

Mr. Nelson: And the classification of workers.

Mr. Dahling: I think he so testified.

Mr. Nelson: What has the time study to do with that? Mr. Dahling, if you will ask these questions, I would not need to go back to that.

Mr. Dahling: I would just as soon ask them, yes.

Mr. Nelson: It will help both of us if you ask that.

Q. (By Mr. Dahling) Are you familiar with the time studies made from time to time?

A. Yes.

Q. Have any of those been made in your department?

1088 A. Yes.

Q. When you hear that a time study is to be made, what do you do?

A. Well, you just as a foreman or a general foreman, are supposed to see the job is working according to your operation sheet.

Q. In other words, that the job is going through according to the routing in the operation sheet?

A. That is right.

Q. What else do you do besides that?

A. That is about all.

Q. Do you discuss the selection of the type of operator?

A. No, you do not.

Q. Who selects the operator?

A. Well, as a rule, the job is set up so that you start at a certain place and the assembly follows it through. What men are on the assembly, those are the men that are timed.

Q. But your place in the picture would be to see that the job was operating in accordance with the routing, and in accordance with the operation sheet?

A. That is right.

Q. And also to see that such materials as might be needed were on hand?

A. Sure.

1089 Q. And that you had just the ordinary situation there and not an unusual or an exceptional situation, is that right?

A. That is what you are paid for.

Q. And you do that?

A. Certainly.

Mr. Dahling: Will you mark that as Company's Exhibit 21 for identification?

(Thereupon the document above referred to was marked Company's Exhibit 21 for identification.)

Q. (By Mr. Dahling) Mr. Wilkins, I show you a pamphlet marked Company's Exhibit 21 for identification and ask you if you have received that pamphlet?

A. Yes.

Q. How long ago was that?

A. Oh, between six months and a year.

Mr. Dahling: I offer Company's Exhibit 21 in evidence.

Mr. Karasick: No objection.

Mr. Nelson: No objection.

Mr. Dahling: Do you wish to see it, Mr. Examiner?

Trial Examiner Jaffee: Yes.

Q. Mr. Wilkins, you received this from the Company?

The Witness: Yes.

Trial Examiner Jaffee: The pamphlet entitled "Time

study at Packard" which bears the designation at
1090 the bottom of the cover Loral 190 UAW, CIO and Packard Motor Car Company, 1944 is received in evidence.

(The document heretofore marked Company's Exhibit No. 21 for identification was received in evidence.)

Q. (By Mr. Dahling) Did you read this pamphlet?

A. Yes.

Q. I notice on page 16 this statement: (Reading):

"The man who makes the time study is called an observer. His first step is to report to the department supervisor and advise him what particular operation he wishes to time."

Is that the process that is followed?

A. No.

Q. What actually is done?

A. Well, the superintendent will tell you that the time study is coming up to your department.

Q. And also tells you as to what operations they are going to study?

A. Sometimes.

Q. And if he doesn't then you presume then that the time study people will tell you when they come in?

A. They have to see the steward first.

Q. That is true. They also see you, do they not?

A. Yes.

Q. This continues (reading):

1091 "The supervisor then informs the employee working on the desired operation that the study is to be made."

1092 Mr. Nelson: What page is that?

Mr. Dahling: That is page 17.

Q. (By Mr. Dahling): Is that the operation you follow?

A. Yes.

Q. Now, of course, a time study has to do with the operations of a worker, does it not?

A. That's right.

Q. By the way, you do no manual work, do you? You do no work on the machines or with the workers?

A. I do not think I have time.

Q. I am just asking that.

A. No.

Q. Do you have an office?

A. A so-called office.

Q. You do not like it?

A. It's all right.

Q. But you think it could be improved?

A. Oh, yes.

Q. Do the foremen under you work on the machines?

A. No.

Q. Now, a time study, as I have said before, is really an operation to determine the time that it should take for a particular process, is it not?

A. That's right.

Q. It relates to the work of the worker?

1093 A. That's right.

Q. I presume that the CIO is very active in connection with these time studies, is that right?

A. Yes, that's right.

Q. And the steward is always present while there is a time study being made?

A. Most of the time.

Q. Their purpose, I presume, is to see that it is fair from the Union standards, is that right?

A. Yes.

Q. Now a time study, once having been made, that has to be approved by the Union, does it not?

A. Yes.

Q. We will say it is approved and put in operation and then the workers claim that they have too much work to do, what do they do then?

A. That's settled before the time study is handed to the foreman.

Q. Yes, but if it should develop later on that a worker complains that they have speeded him up on this particular job and it cannot be produced within the time limited, where would he go, to you, to make his complaint?

A. Probably he would go to the assistant foreman.

Q. And the assistant foreman would take the matter up with you?

1094 A. That's right, his foreman.

Q. And then through that chain, it would get up to you?

A. That's right.

Q. What would you do in that case?

A. I don't know; I never had a case like that.

Q. I presume they would have some method whereby they could make a recheck of that time study?

A. No doubt.

Q. If you find a man who is unsatisfactory and wish him removed from the roll, you can have that done, can you not?

A. No.

Q. What do you do?

A. You can suggest it.

Q. You prepare a document in connection with that matter?

A. A query form.

Q. A query is an inter-office communication at Packard, is it not?

A. That's right.

Q. You have been there a long time, do you know where that term originated?

A. It's been there ever since I have been there.

Q. A query is really a report or communication, when you come right down to it, is it not?

A. It's a form of some kind of information.

Q. You prepare that query, then what do you do

1095 with the query?

A. Well, if I remember right, I don't think I have made out two of them since I have been at Packard.

Q. You do not have very much trouble with the men in your department, do you, Mr. Wilkins?

A. Not very much.

Q. Have you made any out since you have taken over this department in 1940?

A. I think there was one.

Q. Was that a discharge case?

A. Oh, no, a very simple case.

Q. When you say a very simple case, what do you mean?

A. Well, we try to keep the department clean and neat and have the men keep their lunch boxes in their coat room and this man was stubborn and he wouldn't leave his lunch box in the coat room, so we made out a query, but it didn't get any place with it anyway.

Q. Did you demand a hearing?

A. No, they sent the Labor Relations man over on it and he checked it and it just died.

Q. By the way, did you discipline the man or did you ask that he be removed from the roll, in your query?

A. No, I just made the complaint.

Q. And left the matter of penalty to the Labor Relations?

A. That's right.

1096 Q. You made no recommendation in that respect?

A. That's right.

Q. But I do not suppose that if you found a man who was incompetent, that you would hesitate for a moment to recommend his removal?

A. No, I wouldn't.

Q. But you say you have had very little trouble of that sort of thing?

A. Very little trouble.

Q. Consequently, you have had no particular occasion to discipline any workers in your department?

A. Oh, there might have been a few odd cases. The steward and I usually get together on that.

Q. You work that out in your own department?

A. Pretty well.

Q. It does not usually go higher than that?

A. No, for two reasons: It's better to settle a thing in your department, and not have them talking about it, than it is to get a lot of men talking about it and get them sore about it.

Trial Examiner Jaffee: Is that one reason?

The Witness: That's one big reason. That's why I do it, I don't know what other foremen do.

Q. (By Mr. Dahling): I thought you said there were two reasons?

1097 A. Well, in other words, if you have a group of men that get disturbed, why, naturally, you are going to lose production and that hurts efficiency in your department. That's the big reason.

Q. And you want to get that matter, whatever it is, settled at once so there will be an end to it?

A. Why, certainly.

Q. So you take it up with the steward with that in mind and you have been quite successful with that in your department, have you not, Mr. Wilkins?

A. I have a very broad-minded steward.

Q. So you can get along very well with him?

A. I can collectively bargain with him.

Q. I suppose you would not hesitate for a minute if a man was not doing his job, you would tell him so in no uncertain terms?

A. I have.

Q. I believe that. And you have been called upon at times to do that?

A. I have.

Q. Mr. Wilkins, I believe you testified that you are a member of the Foreman's Association of America?

A. Yes.

Q. Were you one of the original members?

A. No, I don't think I was.

1098 Q. Have you belonged to any other labor organizations?

A. No.

Q. You, I suppose, also believe in Union principles?

A. I believe in collective bargaining in good faith.

Q. That is one principle of Unionism, collective bargaining?

A. That's right.

Q. Are there any other principles that you would say should be included?

A. Well, that's the only one I am familiar with.

Q. Through collective bargaining, I suppose you would try to establish some of these other principles of Unionism, would you not?

Trial Examiner Jaffee: Well, now, wait a minute. Which others?

Mr. Dahling: Well, such as seniority.

The Witness: Not altogether on seniority, no.

Q. (By Mr. Dahling): What are your ideas on seniority, Mr. Wilkins?

Trial Examiner Jaffee: That is, answering briefly, if possible.

The Witness: Ability.

Q. (By Mr. Dahling): Solely?

A. (No response.)

Trial Examiner Jaffee: Is that a question?

1099 Mr. Dahling: I thought he shook his head.

Trial Examiner Jaffee: I know, but the reporter does not get it when he shakes his head. Will you read the question?

(Question read.)

The Witness: No.

Q. (By Mr. Dahling): What other considerations should be considered, other than ability?

A. Well, his seniority should come in there.

Trial Examiner Jaffee: And length of service?

The Witness: Length of service, yes.

Q. (By Mr. Dahling): Now, we will say that two people have had the same length of service; if that is true, what should govern, in your opinion?

A. His ability.

Q. Who would be the judge of that ability?

A. That would be handled in bargaining rights.

Q. You say it would be handled in bargaining, you mean the FAA and the Company would sit down across the table and discuss the matter?

A. Sure.

Q. We will say they did that and they could come to no agreement?

A. I don't think that's possible.

Q. Let us just assume they could not come to an

1100 agreement. What should control?

A. I don't know.

Q. Should the Union's idea of this man's ability control?

A. No.

Q. Should the Company's idea or the Company's opinion as to this man's ability control?

A. No.

Q. You would just leave it up in the air, then?

A. No, I would not; I would leave it between the two.

Q. Well, we will say they cannot agree, what would be your next step?

A. I still say that sensible people can bargain.

Trial Examiner Jaffee: Mr. Wilkins, will you agree to this extent, that somewhere, some time, somebody has to decide something?

The Witness: Yes, I will agree to that.

Trial Examiner Jaffee: Otherwise, you will keep talking forever, is that right?

The Witness: If you bargain in good faith, no.

Trial Examiner Jaffee: All right.

Q. (By Mr. Dahling): Mr. Wilkins, are you not familiar with cases in the CIO where there has been no agreement on this question of seniority and strikes have resulted?

Mr. Nelson: Do you mean seniority and ability?

1101 Mr. Dahling: Yes, on the carrying out of their seniority provisions in the CIO contract. If he knows.

The Witness: I don't know.

Q. (By Mr. Dahling): You know of no such case?

A. No.

Q. I assume if the parties could not agree after long negotiations, the Union might feel that it had to take drastic action?

A. I don't know.

Q. So, if you got to a situation where the Company had two men "X" and "Y" who had the same length of service and the Company took the position that "X" had the greater ability and the Union, the FAA took the position that "Y" had the greater ability and should be promoted and the parties could not agree after innumerable conferences and discussions, you don't know what would happen?

A. No.

Q. Have you any thought on what might happen?

A. No.

Q. I presume, Mr. Wilkins, you are loyal to the Union or would be loyal to the Union?

A. As far as honesty, yes.

Q. And also loyal to the members of the Union?

A. Yes.

Q. And you believe in the majority rule controlling
1102 in the Union?

A. If they are honest about it, yes.

Q. And if the majority should happen to take action which you felt was improper you would feel you should go along with it?

A. I don't know.

Q. Well, we will say that the FAA, your Chapter of the FAA, by a vote, decided to strike because Packard refused to promote "Y" rather than promote "X," in the example I have just given you, and you felt that that was all wrong, would you go out on a strike or would you remain in the plant working?

A. If the majority did, yes.

Q. You would follow the rule of the majority, whether you thought it was right or wrong, is that true?

A. You would have to go with the majority.

Q. And you would go with the majority, even though you felt it was detrimental to the interests of the Company?

Mr. Nelson: Insisting on the better man would not be against the interests of the Company.

The Witness: If the cause what they were striking for was right, yes.

Q. (By Mr. Dahling): What, if in your opinion, what they were striking for was not right?

A. As a Board member why we would do as much
1103 as possible to prevent a strike.

Q. We will say that you cannot prevent the strike and the majority votes that there shall be a strike and you feel that the strike is unjustified and you attempted to prevent it, would you go out on strike?

A. If there wasn't anything left to do, yes.

Q. What else would there be left to do?

A. There wouldn't be anything.

Q. If the Foreman's Association of America went out on strike and had this—I don't believe you call it a picket line—and this group of foremen around the gates, you wouldn't go through that group and go back to work?

A. No.

Q. If you thought that one of your foremen or assistant foremen was incompetent or unwilling to do his work, I believe you testified that you would seek to have him removed?

A. Yes.

Q. Is that right?

A. Yes.

Q. If, however, the Foreman's Association of America then fell into the picture and decided that the man was competent or for some reason was against releasing him, would you try to have him removed from the roll?

A. If I was right I would still stick to right.

1104 Q. And even though the majority of the Union might say that you were wrong?

A. It wouldn't make one bit of difference to me, I would stick to what is right.

Q. What is your position in the Union?

A. I am on the Board.

Q. When you say the Board, what Board?

A. That is twelve members.

Q. That is the Executive Board?

A. That is right.

Q. And that would be the Executive Board of the International Union, wouldn't it?

A. No, that is Packard Local No. 5, Chapter 5.

Q. Oh, I see, you are on the Executive Board of the Packard Chapter?

A. That is right.

Q. Not the National Board?

A. No.

Q. I think it was Mr. Traen who testified that if you did not agree with the majority you were very likely to be removed from office?

A. You might be.

Q. He testified that he was opposed to the strike this spring and tried to stop it. Do you recall that?

A. I believe he did.

1105 Q. At the same time he was threatened with removal from office if he insisted too strongly in his efforts?

A. Yes.

Q. And you would, I presume, take the same position that he did and go out with the strikers in a case of that sort?

A. When you are right, yes.

Q. Even though you opposed the reason for the strike?

A. That is right.

Q. Now, I presume—let us get back to the example of the assistant foreman that you say you would fire, regardless of what the majority of the Union felt.

Trial Examiner Jaffee: Fire or recommend?

Mr. Dahling: Well, there is some argument about that. I will use the word recommend.

Q. (By Mr. Dahling): You stated, did you not, that if you had a brother member in the Foreman's Association who was assistant foreman in your department and you felt that he was incompetent and was not working properly you would recommend his removal from the roll, did you not?

A. The first thing we do is take that up with the Board.

Q. When you say the "Board," what Board?

A. Of the Union.

Q. The Board of the Union?

A. Yes.

1106 Q. That is the Foreman's Association of America?

A. That is right.

Q. What do you do at this Board meeting?

A. We state—

Q. (Interposing): When you take the matter up with the Board?

A. We state our case right in front of all the men on the Board.

Q. You state your case and take the matter up with the Board?

A. My case? In other words, the man's case, what he is able to do, what is wrong with him and let them be the judge.

Q. And then we will say that they vote that you are correct in your analysis of the situation and the man should be removed from the roll, what do you do then?

A. Recommend or suggest to the superintendent.

Q. We will say that they feel that you are wrong about

that and that the man should not be removed from the roll, what would you do?

A. I never had any of those cases.

Q. Say you did have such a case?

A. I wouldn't know.

Q. You wouldn't know what you would do?

A. No.

1107 Q. Is that the answer you want to make to that question?

A. Right now, yes.

Q. You want to leave it right there?

A. Yes.

Q. Well, we will say that this situation occurs, the FAA disagrees with you on the release of a man you feel should be released and discharged and they go on a strike because the man is discharged, would you go on the strike with them?

A. I don't quite understand the question.

Q. Well, we will say that the majority of the FAA think that a man is competent but you still think that the man is incompetent and want him discharged and the Company goes ahead and discharges him and then the Foreman's Association strikes because of that, would you go out on that strike?

A. I would have to.

Mr. Dahling: That is all.

Trial Examiner Jaffee: It is eleven o'clock, gentlemen, we will take a ten-minute recess.

(Recess.)

Trial Examiner Jaffee: We will resume, gentlemen.

Redirect Examination.

Q. (By Mr. Nelson): Mr. Wilkins, with respect to Exhibit 20, this blueprint, how much time did you

1108 spend with your division manager on it?

A. Not over five minutes.

Q. Did he have any blueprints present or anything of that kind?

A. No.

Q. What did your exchange consist of, just an oral exchange, just by word of mouth?

A. That's right.

Q. Who else was there at the time, other than yourself and your division manager?

A. I know Mr. Benoit was there, the superintendent, but who else, I can't recall.

Q. I believe Exhibit 19 carries only your signature, is that correct?

A. That's right, it does.

Q. It is a card for what purpose?

A. For clearance and an employee to be sent to the employment office.

Q. Whether he should go or not has already been decided before this card is made out?

A. That's right.

Q. This is just the paper, evidence that it gets into the right place?

A. That's right.

Q. But the decision is made on a different card and
1109 a different form?

A. Yes.

Q. Mr. Wilkins, you were asked a series of suppositious questions by Mr. Dahling, just at the close of his cross-examination, just before the recess?

A. Yes.

Q. Now, coming back to the start of the series, which generally started with the situation where you had a foreman under you and you and the foremen were members of the Chapter of the Association and it was your honest opinion that on the man's performance and your observation of him, he did not measure up to a fair discharge of his duties. Do you remember that situation?

A. Yes.

Q. The question generally was whether you would be faithful to your obligation to the Company and report the man and recommend his discharge. Would you?

A. Yes.

Q. Would you stick to it as long as it was reasonably right to do so?

A. Yes.

Q. Both in the Union, with the Company, and elsewhere?

A. Yes.

Trial Examiner Jaffee: Let me ask you, then, suppose after you thought so and after, in a preliminary
1110 fashion, you indicated that and took it up at a meeting with your Union, while they thought so and you did not, would you or would you not still recommend that man's discharge from the Company?

The Witness: I would.

Q. (By Mr. Nelson): Now, when it comes to the rule of the majority, Mr. Wilkins, I suppose you are aware that some twenty-two million Americans voted for Dewey and are still paying taxes?

A. Yes.

Q. (By Mr. Nelson): Mr. Wilkins, as I have understood your testimony, you have been a foreman in the Packard plant a long time before the Association organized a chapter there, is that right?

A. Yes.

Q. And you were a general foreman, I believe, at the time the Association organized their foremen there?

A. Yes.

Q. Would you say there have been any changes or improvements just by virtue of the fact of organization alone?

A. Yes.

Mr. Dahling: I object to the question as being irrelevant and immaterial. This is not a case in which we are going into matters of that character. This is a case in which these people were to have collective bar-
1111 gaining and representation. Furthermore, the question is entirely too general in character and covers too much territory.

Trial Examiner Jaffee: Will you read the last questions and answers, please?

(The last two questions and answers read.)

Mr. Nelson: My next question would be to indicate what benefits were noted?

Trial Examiner Jaffee: It may stay for the time being, subject to a motion to strike.

Q. (By Mr. Nelson): What benefits have you noted from the fact of organization of the foremen alone?

A. Better understanding among foremen.

Q. Do you mean by "benefits" that the men themselves got all the benefits or that there are benefits to the Company and the hourly-rated employees as well? In other words, is it an all 'round benefit or is it a benefit located in just one place?

A. Yes.

Mr. Dabling: Mr. Examiner, I submit the question is entirely too general, whether there were benefits or whether there were all 'round benefits—

Trial Examiner Jaffee: Mr. Nelson, have you finished questioning on that line?

Mr. Nelson: I have finished that question, yes.

1112 Trial Examiner Jaffee: Have you finished along that line?

Mr. Nelson: I can ask him to be specific as to what benefits there were to the Company and to the men?

Trial Examiner Jaffee: All right.

Q. (By Mr. Nelson): What benefits to the Company did you note?

A. If there is any kind of trouble develops we can get to the foreman and work with one another in much better harmony than we used to work before.

Q. Now, is that at the expense of the men that are under you in any way? Does it also benefit the men?

A. Well, I wouldn't say it benefited the men such a whole lot.

Q. Does it harm them in any way?

A. No.

Q. Now, you say you get together and work better together; do you mean by that on matters of the Association only or matters—

Mr. Donovan: Just a minute, Mr. Examiner, I think at this point and issue of this kind the question should not be leading. I think the witness is having a hard enough time giving us the benefits as it is. I do not think that he should be led and coached.

Mr. Nelson: I will ask the question in a different
1113 form on objection to counsel.

Q. (By Mr. Nelson): What do you mean when you say the foremen worked better together? What kind of work?

A. Well, in doing their duties.

Q. In the plant?

A. Yes.

Q. Now, would you say in your experience there that an outright recognition of the foremen as the bargaining agent of supervision at Packard plant would continue and increase these benefits?

A. Yes.

Mr. Nelson: I believe that is all.

Recross-Examination.

Q. (By Mr. Dahling); Mr. Wilkins, the officers of the Union of your Chapter are elected by the members?

A. Yes.

Q. And the Executive Board, of which you are a member, is likewise elected by the members?

A. Yes.

Q. Would these officers and members of the Board also be subject to removal by the members?

A. They could be.

Q. If the FAA was given collective bargaining, would it be your idea that there should be a representative of the foremen similar to the stewards in the CIO Union?

1114 A. Yes.

Q. Would that representative also be elected to that job?

A. Could be.

Q. Would you think that he should be?

A. Yes.

Q. He, likewise, would be subject to removal by the membership if he was elected by the membership?

A. Could be.

Q. How many of these representatives or stewards of the Union of Foremen would you think would be necessary in the Packard plant?

A. Well, I could only speak for my own division and another division. I do not know how large the other divisions are, but speaking for my own division and another division, I think one man could cover it very nicely.

Q. You mean, one can could cover each division?

A. No, one man for the "S" and "Y" Division, both.

Q. Do you know how many divisions there are in the Packard plant?

A. No, not offhand, I don't.

Q. Would you say there are approximately twenty or twenty-two?

A. I wouldn't even say that; I never checked on it.

1115 Q. You do not know?

A. No.

Trial Examiner Jaffee: How many foremen, general foremen and assistant foremen are there in the "S" and "Y" Divisions together, approximately?

The Witness: Roughly saying, I would say there are around fifty or fifty-five. That's a rough guess.

Mr. Dahling: That is all.

Trial Examiner Jaffee: Any further questions of this witness?

Q. (By Mr. Karasick): Mr. Wilkins, I notice that at the right-hand corner of the Company's Exhibit 20, at the bottom, is the word "Approved" and under that word there appears your signature and the signatures of several other persons. In order that the record may be clear on the point, I wonder if you would examine that exhibit, which I now hand you, and tell us who those other persons are, whose signatures appear there at that place?

A. The first one is Mr. Deislinger, the second one is mine.

Q. Mr. Deislinger has been identified in the record, his title has been given?

A. Yes, he is the manager.

Q. All right, who is the next?

A. The next is mine, then Mr. Benoit's.

Q. Mr. Benoit is who?

1116 A. He is the superintendent.

Q. Yes?

A. The last two are not very plain. I can't make them out. It looks like Mr. Deislinger again, even down below Mr. Benoit again.

Q. Is that Mr. Ayers?

A. Oh, yes, that's Mr. Ayers.

Q. Who is Mr. Ayers?

A. Well, Mr. Ayers, I think he is the head of the Planning Department.

Q. You are not sure of the signature immediately above the signature of Mr. Ayers on the document, are you?

A. No, it looks like Mr. Deislinger and I think it is.

Mr. Karasick: No further questions.

Mr. Nelson: I will ask the reporter to mark this document Petitioner's Exhibit No. 40.

(The document above referred to was marked for identification as Petitioner's Exhibit No. 40.)

Q. (By Mr. Dahling): Mr. Wilkins, you testified that there were certain benefits and improvements from the foremen associating together. Will you list them for me?

A. I didn't hear you.

Mr. Dahling: Would you read the question, please?

(Question read.)

The Witness: Well, one outstanding one is to get
1117 results. If you want stock or if you want to get something repaired, why, you can get it done in a hurry.

Q. (By Mr. Dahling): In other words, your position is that being a member of the same Union, with the other foremen, the other foremen will get together, will get things out faster for you than if you were not associating with them?

A. There is a feeling in there that we should help one another.

Q. And he should help because of his Union loyalty to you?

A. It brings a more friendly relation.

Q. And that comes from your just having these meetings together, is that right?

A. I wouldn't say that.

Q. Well, I thought you testified that because of this Association these results occurred?

A. I didn't say that it was because of the meetings, though.

Q. It was not because of the meetings, it was just the feeling that you are members of the same Union organization that brings that about?

A. I would say so.

Q. And that comes from this loyalty to the members of the Association?

1118 A. It is to help the other fellow.

Q. In other words, you would feel because of this, the Association, if you asked another Union member of the Association to do something for you he would be more inclined to do that than if you were not members of this Association?

A. I would think so.

Q. And that would go down the line, wouldn't it, anything you might want him to do he would be more inclined to follow out your request?

Trial Examiner Jaffee: That is much to broad, "anything." That covers anything.

Mr. Dahling: I am just following Mr. Nelson's general question. I will become more specific later.

Mr. Nelson: Neither of us said that.

Trial Examiner Jaffee: You are following it and embellishing it, I should say embroidering.

Mr. Nelson: I stuck to benefits.

Mr. Dahling: Well, is there an objection?

Mr. Nelson: Yes, there is. "Anything" is too broad, I think.

Trial Examiner Jaffee: Objection sustained.

Q. (By Mr. Dahling): Let's get into these benefits, then, Mr. Wilkins. Do you feel that the mere fact of an Association, regardless of meetings, results in certain

1119 benefits?

A. Yes, to help the other fellow.

Q. I believe the only example you gave was if you needed stock in a hurry the other foremen would be more likely to furnish it to you if you were a member of the Union?

A. Or good advice.

Mr. Nelson: He included repairs, too.

Q. (By Mr. Dahling): And also repairs?

A. That is right.

Q. You might expedite the repairs, or rather, he might expedite the repairs for you because you were a member of the Union?

A. Yes.

Q. What would happen if some of the foremen were not members of your Union and they sought to get the repairs done in a hurry?

A. I don't know.

Q. And that is the way you want to answer that question?

A. Yes.

Q. Now, what other benefits come from this Association without meetings, you have just listed two?

Mr. Nelson: Three. Repairs, stock and advice.

Q. (By Mr. Dahling): Are there any others?

A. Well, there might be others but I wouldn't know just what they are right now.

1120 Mr. Dahling: That is all.

Mr. Karasick: Nothing further.

Mr. Nelson: You may step aside.

Trial Examiner Jaffee: Just a minute.

Q. (By Trial Examiner Jaffee): Mr. Wilkins, can you hire anybody yourself?

A. No.

Q. Can you fire anybody?

A. No.

Mr. Nelson: Does the Examiner include both hourly-rated and supervisory employees?

Trial Examiner Jaffee: By "anybody" I mean anybody. Is that the way you understood it?

The Witness: That is right.

Q. (By Trial Examiner Jaffee): Do you know whether or not any other general foremen or foremen have participated in the making or suggesting of layouts such as indicated in Company's Exhibit 20, that big blueprint?

A. Mr. Examiner, I might say that an ordinary workman could do the same thing that I done if he wanted to.

Q. Did you also testify—I might be wrong there about this—did you testify that one of the purposes of the plan indicated in the blueprint was to save manpower?

A. That is one of the plans. The big plan was to get floor space for offices for the engineers.

Q. Did you testify one of the purposes was to save

1121 manpower?

A. That is right.

Q. And that in turn means, I assume, a smaller number of men would do the same amount of work?

A. It is to save steps and put the men closer together where one man could hand the work to another man without walking any distance.

Q. Where there are more steps then you would need more workmen to put out the same result?

A. Yes.

Q. And that would mean more men?

A. That is right.

Q. And then that would mean a larger quantity of supervision?

A. That is right.

Q. And if the supervision was a member of your Union is it or is it not true that the plan might result in cutting down supervision and, therefore, the members of your Union?

A. It has already done that.

Q. And this plan, this recommendation you say, in connection with the plan, was made about six months ago?

A. Between four and six months ago.

Q. At that time you were a member of the Foreman's Association of America for how long?

1122 A. For about a little over two years.

Q. And you were asked several questions about what your authority and duties were as general foreman and you gave answers at some length. Is it true or is it not that in connection with your authority and duties and responsibilities as general foreman your acts are either approved in advance or ratified thereafter by people above you?

A. Yes.

Q. Well, I put it in the alternative, is it or is it not true?

A. It is true.

Q. Above you is who?

A. Mr. Benoit.

Q. What is Mr. Benoit's title?

A. Superintendent.

Q. What is Mr. Deislinger's title?

A. Manager.

Q. Division manager?

A. Yes.

Q. Who is above him?

A. Mr. Reifel.

Q. As far as you are concerned, how far do you normally go in your everyday dealings?

A. Once in awhile to Mr. Deislinger.

Q. That is, you preliminarily go to at least Mr.

1123 Benoit, is that right?

A. Yes.

Q. And he in turn goes to Mr. Deislinger and so on up?

A. Sometimes the both of us.

Q. The both of you what?

A. Both Mr. Benoit and myself.

Q. Go to Mr. Deislinger?

A. Yes, we will say, "Let's go in and see the boss."

Q. Do you feel, Mr. Wilkins, or do you not, that aside from any action your Union might thereafter take by way of a strike vote for instance, that your membership in the FAA should affect your duties and your responsibilities as general foreman to the Packard Motor Car Company?

A. Did you say should it affect it?

Q. Yes.

A. No.

Q. If another foreman, another general foreman, called you for some help in connection with his job, and the request involved the work of your department as well and if you thought he was right in his request, do you think your duty to the Company requires you to comply with his request, if you can?

A. Yes.

Q. Should it or should it not make any difference, in your opinion, whether he is or is not a member of the FAA?

1124 A. No.

Q. Why, then, did you testify in response to Mr. Dahling's question that—if I understood his question right—that you did not know whether it would make any difference whether the other man was a member of your Association?

Mr. Nelson: I do not think it was quite his question. It did not include the witness. It was impersonal.

Trial Examiner Jaffee: I will make mine impersonal.

Q. (By Trial Examiner Jaffee): Do you remember testifying in response to Mr. Dahling's question that you did not know whether it would make any difference and you did not know what would happen if the other foreman involved in the picture was not a member of the FAA, do you remember so testifying?

A. Yes, I do.

Q. What did you mean by that?

A. Well, I really don't know.

Q. Do you know now?

A. No, I don't.

Q. Well, I will ask you my question again.

Mr. Nelson: My objection is that it is an impossible situation because there is 100 per cent organization at Packard's.

1125 Trial Examiner Jaffee: Well—

Mr. Nelson: And in the first place, they would have to select very carefully—

Q. (By Trial Examiner Jaffee): Your testimony doesn't quite go that far. You admit that there were two or three that were not members. In addition to that, the fact that all of them may be members today does not mean they will be tomorrow.

Mr. Nelson: My point is that this witness does not know what foreman "X" would do if he was brought in contact with one of these three. He would not know.

Trial Examiner Jaffee: That is one of the reasons I made my question personal. I spoke of the witness' own opinion.

Mr. Nelson: He might, of course, indicate what he thought should be done.

Q. (By Trial Examiner Jaffee): Another foreman, another department calls you up for information or help or wants a tool or something repaired or advice about something, do you think he is entitled to it? Now, let's begin with that.

A. Yes.

Q. You think that your duty to the Company requires you to give it to him if you can?

A. Yes.

1126 Q. Should it or shouldn't it, in your opinion, make any difference whether he is or is not a member of the FAA?

Mr. Dahling: I think he already testified it would.

Mr. Nelson: No, he did not.

Trial Examiner Jaffee: Answer the question, would it make any difference, in your opinion?

The Witness: Not from an honest standpoint, no.

Q. (By Trial Examiner Jaffee): Well, we are assuming this thing has actually come up, what would you do? Would you grant his request?

A. I would certainly do the best I could for the Company, give him the best advice I could for the Company.

Q. Even if he wasn't a member?

A. Absolutely.

Q. Would you do any less for him or any more or just the same if he was a member?

A. Well, Mr. Examiner, there is a question that comes in there that makes it kind of hard for me to answer in this way, that before we were organized in the years back the men more or less did not have confidence in one another and for that reason you would consider him, whether he was on the up and up or not and just how he performed with you and what he done in helping you out, but

1127 now that seems to be lifted, if you understand what I mean by that.

Q. Well, of course, if another foreman is not a member of the FAA, apparently there is some confidence he lacks in somebody else. Here is this man not a member of the FAA and he makes this request of you and you think he is right about it, but he is not a member of the FAA, you have already testified, at least at one point, that you would grant that request?

A. I would.

Q. Now I am asking you whether or not you would do any more for him or less or the same if he was a member of the FAA?

A. I would do the same.

Q. Did you understand my question?

A. Yes.

Q. And you think you understand your answer?

A. Yes.

Q. And that is the way you want to leave it?

A. Yes.

Trial Examiner Jaffee: All right. I want to point out in another connection, however, to counsel—it probably belongs more appropriately at the end of the hearing—something you might also bear in mind in writing briefs if you intend to file them. The question
1128 of authority, power and responsibility affects, in my opinion, my personal opinion, not only the things over which a supervisor may have authority, that is to say, not only such matters considered horizontally but also the persons involved in the line of authority, that is to say, the power and authority itself considered vertically. I think both the vertical and horizontal enter into it. In other words, in the question of the authority and duty and responsibility and the degree thereof—that such matters in turn affect the entire unit question. Are there any further questions of the witness?

Mr. Nelson: No further questions.

Mr. Dahling: Yes, I have some questions.

1129 Q. (By Mr. Dahling) Mr. Wilkins, you stated that you had no authority to hire. Did you mean by that that you could not go out on the street and hire a man and bring him in to work in your department?

A. No, you can't even go in the employment office.

Q. In other words, what you do is requisition the help you need on the forms we discussed?

A. That's right.

Q. And you also stated you have no right to discharge a man?

A. That's right.

Q. If you have a man in your department whom you feel is incompetent and should not be working for you, what do you do?

A. You recommend or suggest it.

Q. You can recommend or suggest the discharge of that man or his removal from your roll, is that right?

A. That's right.

Q. Have you done that?

A. I can't remember when I done anything like that.

Q. You can remember no time when you personally have put through such a recommendation?

A. No.

Q. Possibly you might have in the past, though?

A. Might have.

1130 Q. You would not hesitate to do so if you felt the man should be removed?

A. No, I would not.

Q. Now, in answer to one of the Examiner's questions as to whether or not you had to have various matters approved, I think you stated you did, is that correct?

A. Yes, sir.

Q. But these matters that you have to have approved are originated by you in the first instance, are they not?

A. Some of them.

Q. Well, the matter of discharges of men which might have originated by you as recommendations?

A. Might have.

Q. The matter of getting the necessary tools—that would be originated by you even if it had to be approved by someone else, would it not?

A. Yes.

Q. If you found that the quality of your production was down and not according to specification, you would originate the procedure which would bring about correction of that situation, would you not?

A. Yes, sir.

Q. If you were not getting sufficient quantity of materials, you would likewise originate the recommendation or the procedure to correct that situation?

1131 A. Yes.

Q. On the matter of disciplining a worker, that would originate also with the foreman, is that true?

A. Well, it might start down with the assistant foreman.

Q. Yes, but it would start somewhere in the foremen's

line, the assistant foreman or the general foreman, would it not?

A. That's right.

Q. Is it not true that generally in connection with these duties you have described and your responsibilities, that you originate these various communications and recommendations, which, in turn, are approved by higher management?

A. That's what you are paid for.

Q. And you think it is your duty to do that?

A. Yes.

Q. At times, your assistant foreman may make recommendations to you, I suppose, is that right?

A. Yes.

Q. You consider those recommendations, do you?

A. Sometimes.

Q. Sometimes you just disregard them?

A. That's right.

Q. And sometimes you feel that they are proper and you carry them further up the line?

1132 A. Yes.

Q. Your assistant foreman, however, if he has an idea, or if he has some action he wants taken, he comes to his foreman first, does he not?

A. Sometimes.

Q. Where does he go the other times?

A. Oh, he might be talking to the superintendent or the manager either.

Q. He could recommend directly up to the superintendent without letting you know anything about it?

A. He could recommend that on a Work-To-Win form.

Q. He would make a suggestion in accordance with your Work-To-Win procedure?

A. That's right.

Q. What is that?

A. That's a form that they have for suggestions.

Q. He writes the suggestion on that form, where does he dispose of the suggestion?

A. He puts it in the mailbox.

Q. There is a box prepared for that, is there?

A. Yes, sir.

Q. Now, let us say your assistant foreman desires, however, to have a man removed from one of these engines because he is incompetent and cannot do the work, what does he do about that?

1133 A. He generally goes to the foreman.

Q. When you say he generally goes to the foreman, does that cover the situation practically in its entirety?

A. No.

Q. You mean, he could if he wanted to, go to the division manager?

A. He could go to the general foreman.

Q. He could go to the general foreman, but it would be unusual, would it not, for an assistant foreman to take his recommendation up with someone higher up than the general foreman in the first instance, would it not?

A. Yes, I would say it would be.

Q. In other words, you could not run an efficient department if that was done?

A. There's got to be a head over anything in business.

Q. And that head who is over anything has to know what is going on down below, is that true?

A. That's right.

Q. He, in turn, considers the recommendation that comes up and either approves or disapproves it, is that right?

A. That's right.

Q. And that is your position with your assistant foreman and your foreman?

A. Yes.

Q. If you have recommendations to make, you make

1134 them to your superintendent?

A. Yes.

Q. Your superintendent, in turn, is under the supervision of someone else, is he not?

A. Yes.

Q. He would, in going up the chain of managerial authority, take up these matters with the man next above him, is that true?

A. Yes.

Q. He might, of course, have certain authority that he could exercise without getting approval, I suppose?

A. I don't know.

Q. As you go up the line, these various people report to the managerial authority above them, is that correct?

A. I think so.

Q. You have no particular knowledge as to that?

A. No.

Q. You stated, Mr. Wilkins, that one of the benefits of being a member of this Association that came from the fact of the Association solely was that you could get your repair work done faster?

A. I said you could probably get better results.

Q. I believe you testified also that it would improve the situation in getting your stock and your material when you wanted it?

1135 A. Yes.

Q. That would arise solely because of the fact that you and the other foremen happen to be members of the Foreman's Association?

A. I would say a better understanding.

Q. Well, would that arise because of the better understanding, is that your answer?

A. I would say yes.

Q. But I believe you stated that this did not arise because of meetings; it was solely because of the fact that you were both members of the Association. Was that not your testimony?

A. I think it was.

Q. You have also testified, however, that if a non-member, if I recall your testimony, of the Association, asked you to do something for him, the fact that he was a non-member would make no difference. Did you so testify?

A. I did.

Q. How do you reconcile the two answers?

A. In fairness to the other man.

Q. In fairness to the other man, you would give him the same treatment that you would give a member of the Union?

A. And I might say also the Company.

Q. Let me get that again.

A. In fairness to the other man and also the Company.

1136 Q. You would even though you were a member of the FAA and you had another foreman who was not a member, the fact that he was not a member of the FAA would not in any way change your attitude toward him in connection with speeding up repairs or seeing that he had stock?

A. No

Mr. Dahling: That is all.

Trial Examiner Jaffee: Are there any further questions of this witness?

Mr. Karasick: No questions.

Trial Examiner Jaffee: May I ask you, can you demote a man?

The Witness: No, only by classifications.

Trial Examiner Jaffee: What do you mean by that?

The Witness: Well, if a man is on a higher classification, you fill out that form and send it in, provided that the steward and the foreman can agree on it.

Trial Examiner Jaffee: Under what circumstances might you do that?

The Witness: Well, for instance, if the job is too heavy for the man or he wasn't capable of doing the job, as a foreman or general foreman he should call the steward in first and talk about it and make up his mind before the man knows anything about it.

Trial Examiner Jaffee: Do you have to get approval

1137 in a case like that?

The Witness: Oh, yes.

Trial Examiner Jaffee: I do not mean from the stewards, but I mean your superiors?

The Witness: The superintendent has to sign his clearance on the classification change.

Trial Examiner Jaffee: All right, are there any further questions?

Mr. Nelson: No further questions.

Trial Examiner Jaffee: All right, the witness is excused.

(Witness excused.)

Trial Examiner Jaffee: Next witness.

Mr. Nelson: I have had Petitioner's Exhibit 40 marked and I offer it in evidence. It is the Press release of the

Army and Navy on May 17, 1944, at the time of the settlement of the strike, and I offer it because Mr. Donovan examined on portions of it. I desire the whole release in evidence instead of the mere portions he offered.

Trial Examiner Jaffee: You say press release; what do you mean, Mr. Nelson?

Mr. Nelson: It is a statement by the General and the Admiral who testified at the National War Labor Board hearing.

Trial Examiner Jaffee: I mean, whose Press release?

1138 Mr. Nelson: It is the Army and Navy press release.

Mr. Dahling: Mr. Nelson, I thought when we discussed this matter before that you had in mind to put in the transcript, the testimony which was taken at that hearing.

Mr. Nelson: Well, we discussed both, as a matter of fact, and I did think the Press release would be much the briefer. I have the transcript here, consisting of 31 pages, the whole proceeding on that case before the National War Labor Board, with the single exception of notifying the Board of the action of the National Executive Board calling off the strike and directing the members to go back to work. It seems to me the gist of the matter, as referred to by Mr. Donovan in his cross-examination is contained in the Army and Navy Press release of May 17, 1944.

Mr. Dahling: What I had in mind was the part of the transcript that was published in the Foreman's Association paper, "The Supervisor." I am looking for my copy of it now.

Mr. Examiner, when we were discussing this matter, I thought that Mr. Nelson was referring to the transcript of the testimony that was taken before the War Labor Board at the time Mr. Keys and his Board were ordered before the Board to show cause why the strike should not be called off. That appears in the pamphlet or magazine called, "The Supervisor" apparently as issued by

1139 the Foreman's Association of America, as an official publication. The volume is Volume 3, Number 5, of July, 1944.

Trial Examiner Jaffee: And is Company Exhibit 2, for identification.

Mr. Dahling: It is not my understanding that it was put in in its entirety.

Trial Examiner Jaffee: It was not put in at all; it was just marked for identification.

Mr. Dahling: I see. The part I have in mind commences on page 15 and it has a large heading, "Drama in the hearing room."

Mr. Nelson: But it was never submitted for examination. May I see how much of the transcript was included in that? I do not remember.

Mr. Dahling: Yes.

Mr. Nelson: The substance of Petitioner's Exhibit 40 is included in this document; I cannot say how much word for word, but apparently it is an attempted copy in each case.

Trial Examiner Jaffee: From a quick look at Company Exhibit 2 from this distance, I should say that a lot more than that is included.

Mr. Nelson: A great deal is included, and practically all the transcript is included, which is 31 pages.

Trial Examiner Jaffee: In that case, it would seem to me the question would be whether to take Petitioner's Exhibit 40 or the original transcript.

1140

Mr. Dahling: My point is that the statement, of course, is associated with what went on before and what went on afterwards and for a proper understanding of it, you would have to have that in.

Trial Examiner Jaffee: Which?

Mr. Dahling: That is what went on at the hearing before this statement was made.

Trial Examiner Jaffee: The best evidence of that will be the original transcript.

Mr. Dahling: I have no objection to the original transcript. I assumed this was, because it is in question and answer form.

Trial Examiner Jaffee: You mean, Company's Exhibit Number 2?

Mr. Dahling: Yes, I assumed that was the transcript.

Trial Examiner Jaffee: Well, of course, it would not be worth spending the time comparing the whole thing here.

Mr. Nelson: Of course, there is an addendum by Mr. Friedin on page 12 in Company's Exhibit 2 covering the subsequent events which is not in Petitioner's Exhibit 40, nor is it in the transcript. I will have the transcript marked Petitioner's Exhibit 41 and have it available, and I am willing that the Examiner should determine which is the proper exhibit to receive, but I do think
1141 some complete coverage of the subject should be added to the record.

(The document referred to was marked for identification as Petitioner's Exhibit No. 41.)

Trial Examiner Jaffee: Well, I suggest, as there seems to be no question about it, that you put in the entire transcript and that will take care of that part. If you also want to put in Mr. Friedin's addendum, make a separate offer of that.

Mr. Nelson: I would like—if 41 goes in—I would like Mr. Jesse Friedin's addendum on page 19 of Company's Exhibit 2—

Trial Examiner Jaffee: (Interposing) How long is that?

Mr. Nelson: Four short paragraphs about one-third of a column.

Trial Examiner Jaffee: In small print?

Mr. Nelson: Fairly readable print.

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Mr. Nelson: Precisely what took place is set forth in Petitioner's Exhibit 41.

Trial Examiner Jaffee: May I see that?

Mr. Dahling: Yes.

Trial Examiner Jaffee: As a result of the off-the-
1142 record discussion, Petitioner's Exhibit 40 will not be offered, and instead, the original transcript of that hearing before the War Labor Board in Washington will be offered as Petitioner's Exhibit 41 and is received.

(The document heretofore marked Petitioner's Exhibit 41 for identification was received in evidence.)

Trial Examiner Jaffee: In addition, Mr. Nelson indicates that he will not offer the so-called addendum consisting of certain remarks of Mr. Friedin. Petitioner's Exhibit 40 is therefore withdrawn and Petitioner's Exhibit 41 is received.

Mr. Nelson: What about Company's Exhibit 2 as a possibility—

Trial Examiner Jaffee: (Interposing) I understand that Company's Exhibit 2 will be withdrawn or is withdrawn.

Mr. Donovan: I do not believe that it was ever offered. I used certain statements therefrom.

Trial Examiner Jaffee: Then it is withdrawn.

Mr. Nelson: I have copies of Petitioner's Exhibits 34 through 39 inclusive. I will offer the copy to counsel and the original to the Examiner.

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Mr. Nelson: I am recalling Mr. Keys to the witness stand.

1143 ROBERT H. KEYS,

a witness recalled by and on behalf of the Petitioner, was examined and testified further as follows:

Redirect Examination.

Q. (By Mr. Nelson) Mr. Keys, you have been previously sworn—

Mr. Donovan: (Interposing) Just a minute, please. Pardon me, Mr. Nelson, we want to ask counsel a question about the exhibits. These exhibits 34 to 39 inclusive were once offered and received, as I understand it?

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Mr. Nelson: May I continue?

Trial Examiner Jaffee: Yes.

Q. (By Mr. Nelson) Mr. Keys, since you testified in this proceeding the other day, I take it you have examined the transcript?

A. Yes, not all of it.

Q. Did you examine that portion relating to your testimony including your testimony as to the levels of foremen in the bargaining unit at Ford's?

A. Yes, I examined portions of it.

Q. Do you desire to make a correction in your testimony?

1144 A. Yes, I made an error in describing the levels and I would like to make that correction if I may. I would like to read it right from the contract between the Association and the Ford Motor Company so that it is accurately described.

Trial Examiner Jaffee: How long is it?

Mr. Karasick: Mr. Examiner, isn't that contract in evidence?

Trial Examiner Jaffee: Yes. Why not merely refer to that portion of the exhibit that is in evidence?

Mr. Nelson: Where is it?

The Witness: On page 9, it is section 5.

Q. (By Mr. Nelson) And you would rather have that as a statement of the levels of supervision covered rather than your testimony?

A. I made an error in describing the levels. It is in here (indicating).

Trial Examiner Jaffee: It begins with the phrase "For the purpose" and ends with the words "Job foremen."

Mr. Karasick: Mr. Nelson, you mean his testimony with respect to the levels covered regarding the Ford Motor Car Company Plant?

Mr. Nelson: That is right, covered by the contract.

Trial Examiner Jaffee: In other words, what you refer to as Section 5 really is the introductory paragraph

1145 of Section 5 down to but not including sub-paragraph (b)?

The Witness: That is correct.

Q. (By Mr. Nelson) On another subject, Mr. Keys, you testified the other day on the attitude of the Association towards including superintendents in the Association.

A. Yes.

Q. Or to put it the other way, whether the policy of the Association excluded superintendents, do you remember testifying on the subject?

A. Yes, I do.

Q. Do you desire to make some change in that testimony or do you desire to clarify it?

A. I believe I could state it a little more clearly.

Q. I wish you would do it then as briefly as you can.

A. Well, I stated that we did not include in the membership of the Association bona fide superintendents, that is, superintendents in fact, but we were including assistant superintendents and superintendents who were only classified as such and not actual assistant superintendents or superintendents in fact. I do not want my testimony to be construed by anyone that we are closing the door in any manner whatsoever to assistant superintendents or superintendents in the future. Whether we will or will not take any assistant superintendent or superintendent in the future will depend upon the Employer.

1146 Trial Examiner Jaffee: Do you admit to membership assistant superintendents at this time?

The Witness: No, we do not, that is, assistant superintendents or superintendents who are actually bona fide assistant superintendents or superintendents. We have excluded them for bargaining unit purposes. The policy of the Association in the past has been to first determine whether a person or an employee classified as an assistant superintendent or superintendent was truly such and if he was, then we have excluded them.

Trial Examiner Jaffee: Is that from membership as well as from a unit?

The Witness: From membership as well as from a unit.

Q. (By Mr. Nelson) Mr. Keys, you made a statement of the policy of the Association with respect to unfair labor practices in your previous testimony. Do you desire to make an addition to that?

A. I don't believe I made a statement about the policy of the Association. I made a statement that it was my understanding that the Board would take certain actions under certain conditions. Since making that statement I have investigated and checked with legal counsel and I find that the Board holds an Employer responsible for any action of his supervisory employees that interferes

with the free choice and right of the rank and file
1147 employees for a union of their own choice. The policy of the Association, of course, is and we will continue to advise our foremen members not to interfere in any manner with the right of employees to self-organization.

Q. I think some questions were asked for the purpose of disclosing the policy and principles of the Association with respect to the responsibility and duties of the foremen towards the Company or Employer, where that is affected or may be affected by membership in the Association. Do you have in mind your testimony in that regard?

A. Yes, I recall Mr. Donovan reading a statement and asking me if I approved of it and I answered no. Then the Examiner asked me another statement and the same question and I still answered no. When the Examiner rephrased it and added "within the scope of his job" I agreed with it. I didn't go into detail. We feel that a foreman's primary responsibility, within the scope of his job, is to his Employer, but when it comes to matters pertaining to his own wages, hours and conditions of employment, his primary responsibility is to himself and to his family.

Q. There has been, in the course of this proceeding, Mr. Keys, the history of the strikes participated in by the Association and there has been some discussion of the policies of the Association with respect to strikes. Do you have anything to add to your statement in that respect?

1148 A. Well, I testified as to the number of strikes, their duration and so forth. I do not believe that I stated what I believe the reason to be for the strike.

Q. If you want to, you may do so.

Mr. Dahling: Mr. Examiner, do I understand this question to be the reasons for the strikes? Do you wish the witness to testify, Mr. Nelson, as to his opinion for the reason for the strike?

Mr. Nelson: Yes.

Mr. Dahling: Mr. Examiner, I can see no relevancy in that sort of testimony in this case and I object to it.

Trial Examiner Jaffee: Which strikes are you talking about?

Mr. Nelson: The strikes in which the foremen have participated in as an Association as shown by the record in this case and the exhibits in this case.

Mr. Donovan: Mr. Trial Examiner, there were a great number of those strikes extending over a considerable period of time. As no doubt the Trial Examiner will remember, the question was gone into rather thoroughly once. I think the Trial Examiner will recall that there was no agreement between the answers made by Mr. Keys and certain evidence in the case as to the causes of some of those strikes. The way the matter is left now, it has already been covered. It is largely a matter of
1149 argument from the record as made. What is being elicited now is repetitious and an attempt of some sort to improve the answers previously given by this witness when these matters of strikes were being discussed. I object to the question because of its repetitious nature and because it has been answered. I do not think it should be allowed in its form. The way it is asked, it is in an improper form. There have been a lot of strikes by foremen in different years and different months of the same year and in lots of different plants that were involved. There were a great many different reasons alleged to have been the causes of those strikes and there is great disagreement about that.

Mr. Nelson: Mr. Donovan, I disagree with your statement in its entirety. For one thing, everybody has carefully avoided the causes of the strikes. I notice that in his cross examination, Mr. Donovan avoided the causes.

Mr. Donovan: I take exception to that.

Mr. Nelson: The causes of the strikes were not stated. As he stated, if he thought it was repetitious, he would permit it. He is afraid of having something in the record added and that is exactly what I propose to do.—

Mr. Donovan: (Interposing) What I am afraid of—one of the reasons for the strikes as given, was that the purpose was to get publicity and to get concessions from the War Labor Board—

1150 Mr. Nelson: (Interposing) I heard you say that but not any witness.

Mr. Donovan: You heard me read that from Keys' statement in the "Supervisor" under the article "The Truth Will Out." He did get that publicity—

Trial Examiner Jaffee: (Interposing) If the witness wants to add something to what he has previously testified to or subtract therefrom, he may do so. I trust he will not multiply, however.

Mr. Karasick: Before the witness answers that question, that question may lead to a rather prolongation of the record by reason of its form and by reason of the connotation of the word "reason" as being the ultimate or undisputed reason for the strike. In that case, the Employer will then go into the facts to show that that is not the reason and we may prolong this hearing indefinitely.

Trial Examiner Jaffee: I think I made it clear from my past rulings on similar matters that I permitted it solely to show the claim and allegations and positions and not as evidence of the ultimate facts.

Mr. Karasick: If you will allow me to finish, Mr. Examiner, all I was going to suggest was that the witness could testify as to why the Association went on strike and that would be a statement of the position of the Association, which I think would clarify the question and
1151 not be as objectionable from the standpoint of counsel for the Company.

Trial Examiner Jaffee: In any event, I am permitting it only on that basis.

Mr. Karasick: On the basis I suggested?

Trial Examiner Jaffee: Yes.

Mr. Karasick: Very well.

Trial Examiner Jaffee: Make it as brief as possible.

Mr. Donovan: May I have the question he is now answering read to me again?

Trial Examiner Jaffee: Read the question.

Mr. Nelson: I will restate the question.

Trial Examiner Jaffee: All right.

Q. (By Mr. Nelson) What were the reasons for the Association going on strike?

Mr. Donovan: Well, now, this, I take it, refers to any strike any time, any one of numerous strikes the Foreman's Association of America have had.

Mr. Nelson: Witness, confine yourself to the strikes covered by this record and by your testimony in the record.

Mr. Donovan: That is in dispute. He has alleged that some of them were not strikes. He said they were work stoppages and he did not consider the particular event a strike although everyone else did. What does the question mean?

Mr. Nelson: It is because they are in controversy
1152 that I offer the question.

The Witness: To have the record clear, I will confine myself to the large series of strikes that took place in the month of May, which was terminated by the appearance of the officers and the board members of the Association before the War Labor Board.

Mr. Donovan: In May, 1944?

The Witness: Yes. Our Association, we believe, has been under constant attack by the Employers since the Maryland Drydock decision. The members of our chapters have repeatedly called upon the officers to permit them to strike to stop the demotions, discharges, transfers and so forth. Because of the war effort, we did not want our members to participate in a strike and we held it down pretty well for a full year. Following the Maryland Drydock decision, the members took it upon themselves to walk out and protest the attack on their organization.

Mr. Nelson: You may cross-examine.

Mr. Donovan: I think we want to defer the cross-examination until after the recess.

Trial Examiner Jaffee: I think I made it clear that the last answer stays in merely to indicate a claim or position and not beyond that.

Mr. Nelson: May I make an announcement, Mr. Examiner?

Trial Examiner Jaffee: Yes.

1153 Mr. Nelson: That is our case. We do not on the main case intend to offer any further testimony or

witnesses, unless something is developed on cross-examination which I do not anticipate now. I make this statement so that counsel will know what to do during the recess.

Trial Examiner Jaffee: Very well. We will recess until two o'clock.

(Thereupon a recess was taken until two o'clock P. M.)

1154 After Recess.

(Whereupon, the hearing was resumed, pursuant to recess, at 2 o'clock P. M.)

Trial Examiner Jaffee: You may proceed.

ROBERT H. KEYS

resumed the witness stand, was examined and testified further as follows:

Recross-Examination.

Q. (By Mr. Dahling): Mr. Keys, you testified that your primary responsibility, rather the primary responsibility of the foreman within the scope of his job was to the Company?

A. That is right.

Q. And you believe that?

A. I do.

Q. And you believe also that the primary responsibility as to working conditions, wages and so forth, of the foreman is to himself, the foreman has that responsibility to himself?

A. I do.

Q. Where, Mr. Keys, does the responsibility to the Foreman's Association of America come in, and the loyalty to that Association come in?

A. I think I understood your question, where does
1155 the loyalty to the Association come in?

Q. Where does the responsibility of the foreman to the Foreman's Association of America come in?

A. His responsibility to the Association is to pay his dues, go to meetings and be a good member and—

Q. (Interposing): To believe in Unionism and its principles?

A. Yes, I stated that in my testimony earlier.

Q. And to fight for them?

A. Yes.

Q. Are these responsibilities to the Foreman's Association of America secondary to those other responsibilities that you have testified to?

A. Yes, to the responsibilities within the scope of his job to his employer, they are secondary.

Q. Let's take the case of the incompetent assistant foreman again. The general foreman decides that he is incompetent and cannot do his work and for the good of the Company he should be fired.

Trial Examiner Jaffee: Just to keep the record clear, I think those questions were originally asked of the last witness. Perhaps you might ask this witness whether he heard that testimony as answered by the last witness.

The Witness: I heard the testimony as to the last
1156 witness, yes.

Q. (By Mr. Dowling): Part of the questions asked him related to the situation that I have just described. That is to say, where an assistant foreman is incompetent and the general foreman decides that he should be taken from the roll or fired. Now, we will say that the Foreman's Association of America does not agree with the general foreman and goes out on a strike because the Company follows the recommendations of the general foreman, should the general foreman join in that strike?

A. Do you have reference to an authorized strike by the Association because of those particular circumstances?

Q. I have reference to any strike in which the members of the Association are engaged.

A. If it was an authorized strike by the Association, yes, he would be expected to participate.

Q. He should go out, regardless of the fact that he is convinced the retention of this incompetent assistant foreman is contrary to the best interests of the Company itself?

A. When you are speaking of hypothetical cases, I can only answer or give you hypothetical answers. I would say he would be expected to join the strike, if such a thing occurred.

1157 Q. And that would apply also to any action which a general foreman might take which would affect a member of the Foreman's Association if the Union disagreed with what that general foreman did and should strike, the general foreman should, as a member of the Union, go out on strike?

A. Well, the words "any action" are very broad, but offhand I would say yes, providing you take into consideration the processes of collective bargaining. In other words, you can't say this might happen without taking into consideration many other things, such as the process of collective bargaining, what the contract provides for in the way of arbitration, and so forth. That all has to be considered before answering those types of questions.

Q. All right, Mr. Keys, say you have a contract providing for collective bargaining, and all that sort of thing, but we will say this assistant foreman is fired because the general foreman has recommended it and believes in it, and the Foreman's Association of America disagreeing with the general foreman, makes an issue of it and calls a strike. Should the general foreman go on strike?

A. I stated in my earlier testimony that he would have no obligation to do so. As a good Union member, he would be expected to do so.

1158 Q. And if he, because he felt the strike was unjustified, should attempt to go by—you do not call it a picket line—by the foreman, the foremen, rather, whom you might have stationed at the gate, what would their duty and obligation be to the Union in their treatment of him?

A. Do you mean whether they would be ordered to stop him or not?

Q. Yes.

A. Yes, if a strike, an authorized strike and picket lines are formed, they are for the purpose of stopping production.

Q. And you would stop this general foreman from entering the plant?

A. If it was an authorized strike, yes.

Q. If he insisted and did enter the plant and work, what would be the next thing the Union would do?

A. You are asking me all hypothetical questions now. We haven't had any such cases. I assume we would take it before the Executive Board and determine whether the man should be suspended or not.

Q. And would you not say in a case of that kind, that he would be suspended from membership in your Union?

A. No, I wouldn't say so.

Q. It is not a serious offense then, for a man to insist upon working when the others of the Union are out on strike?

1159 A. Yes, it is in violation of the Union principles.

Q. Are not Union men disciplined for violation of Union principles?

A. We have never disciplined any in our Union yet.

Q. Have you ever had the situation I have just described to you arise?

A. No.

Mr. Dahling: Mr. Examiner, I see that Mr. Donovan is here and he is prepared to ask some questions of Mr. Keys, and if I may, I will suspend at this time and let Mr. Donovan go ahead.

Trial Examiner Jaffee: Very well.

On the record.

Mr. Donovan: Mr. Trial Examiner, referring to the question which was asked of Mr. Keys just before the Petitioner closed his case and with reference particularly to the question put to him by Mr. Nelson and objected to by us, as to what were the causes of the foremen's strikes, Mr. Keys being allowed to answer over our objections, that they were due to the demotions, transfers and general bad treatment of foremen; indicating that the reason for the strikes was a lot of grievances of one sort or another of the foremen, we still objected and the Trial Examiner—if I am correct—now is ruling in this way: He said—

1160 and I am trying to be accurate, and if I am not I wish you would correct me—he said he was allowing

the answers given by Mr. Keys to that question to stand but only as representing a claim made by the Foreman's Association of America as to what they thought the causes of the strike were. Am I substantially correct in that statement?

Trial Examiner Jaffee: That is approximately correct.

Mr. Donovan: Well, in view of that and if Mr. Nelson wishes to insist upon his question and I renew my motion to strike the question and the answer—but if the Examiner feels that he cannot do that—I wish to offer on behalf of the Packard Motor Car Company in this case—to represent the claim made by them as to what the reasons for the strike were and the claim that there were no substantial grievances of any kind of the foremen—in a proceeding in which the Foreman's Association of America was a petitioner before the War Labor Board starting in May of this year and extending until its last session in October 31, 1944; by virtue of a special panel appointed by the National War Labor Board in Washington—there was a panel sent to Detroit to hear and examine into the foremen situation. That followed the strikes that Mr. Keys testified to. The subsequent appearance of Mr. Keys
1161 before the War Labor Board in Washington and the calling off of the strikes, among other things, as we claim in that case—resulting for the Foreman's Association of America in the appointment of this rather outstanding panel to make a more thorough investigation into what was wrong with the foremen and what were the causes of the strikes. That case was entitled before the National War Labor Board Region 11 in the Matter of the Murray Corporation of America, Briggs Manufacturing Company, Chrysler Corporation, Republic Steel Corporation, Packard Motor Car Company, Bohn Aluminum & Brass Corporation, the Aeronautical Products Company and the Gar Wood Industries and the Foreman's Association of America, being respectively cases numbered 111-2882-D; 111-4746-D; 111-4747-D; 111-4748-D; 111-5438-D; 111-5798-D. Most of those sessions were held in the courtroom in which we are now sitting and the hearings extended with some interruptions and interim adjournments from, as I said before, May, 1944 to October 31, 1944,

which I believe was the last and concluding session. The employers' answer to the evidence given by Mr. Keys in that case—did I mention the Packard Motor Car Company, Mr. Dahling?

Mr. Dahling: Yes.

Mr. Donovan: —including the Packard Motor Car Company, Petitioner here, are reflected in those
1162 proceedings very fully. Every alleged grievance or wrong the foremen claimed they had were gone into and broken down from the testimony of individual foremen who gave such specific incidents as they could recall. In each of those cases a very careful and extended and lengthy investigation was made of each and every single alleged grievance, whether general or whether related to a particular man or employee or foreman. A very thorough exposition of it—I am stating our claim now—that record discloses, together with the exhibits which were numerous and lengthy and which, by the way, not only included matters relevant to the meeting of the claim that Mr. Keys made as causes for the strikes, but covered other matters relevant to this hearing and reflects also the claim of the Packard Motor Car Company, Petitioner here. We desire at this time to have marked and offer in evidence the entire proceedings in the War Labor Board case as to the claim of the Petitioner why the strikes of the foremen occurred. In answer to the testimony admitted as to the claim on the part of the Foremans' Association of America in this case and made as are today at the close of their case by a general statement as to the causes or reasons for the foremen's strike. I would desire also to have marked and received in evidence each of the exhibits of the several companies I have
1163 mentioned, as they were offered and received in that case. If the Examiner feels that this morning's testimony should stand and if he should feel that he could not admit properly—admit the offered exhibits that I have just mentioned, as it properly applies to the kind of evidence that was received from Mr. Keys this morning, we would then have no alternative and would find it necessary with this witness to go through each of the transfers, demotions and so forth, which he has included as

reasons for strikes, and expose the truth of the matter and again reflecting the claim of the Petitioner in this case that the reasons given by Mr. Keys were not the reasons for the strike.

Mr. Nelson: Have you completed your statement, Mr. Donovan?

Mr. Donovan: I think so.

Mr. Nelson: Well, I want to object to the introduction of these twenty-two volumes. The Examiner can see what a pile of testimony it is. It is unnecessary and an encumbrance to the record, and on the ground that the purpose of that proceeding was so entirely different from this proceeding and the whole manner of it was so different, that it would be an inappropriate thing to spread on the records of this Board. I am sure the Examiner knows that the purpose of that panel was purely an investi-
1164 gatory one, it was exploratory, and it had no certification of the bargaining agents as its objective. The cases are so different and the rules applicable are so different that this would be an inappropriate showing, even if the transcript were otherwise admissible.

Trial Examiner Jaffee: How many pages are there in that other transcript, roughly?

Mr. Donovan: There were twenty-four volumes of the printed transcript of which this is a sample, either twenty-three or twenty-four volumes. Volume 21, which I have in my hand, ends with page 4040. I might say, and I should like to have it included in the record in connection with my offer of evidence, that Mr. Keys on cross-examination denied that in the Foreman's hearing before the War Labor Board, which we are now discussing, denied that that record contained any denial by the Foreman's Association of the very voluminous evidence on the active cooperation of the CIO with the Foreman's Association of America during their strikes in May. If the Examiner will recall, he denied that in the War Labor Board Panel case he was asked if he did not remember those things, and asked why he did not deny them in the War Labor Board case; and he, and Mr. Nelson also, said it had been denied, although a secondary fact in connection with my

offer is that these transcripts will refute that testi-
1165 mony and will show that there was no such denial in that transcript.

The Examiner will remember I asked about their solicitation of superintendents, about the pandemonium caused in the plant, especially in the Briggs plant, during the foremen's strike, by stewards, the rank and file, committeemen, pounding on the desk, hiding the material, all of which, of course, furthered the foremen's strike. This evidence which we offer also on that reason and for that additional reason, would be a refutation of this testimony and would properly be relevant for that reason, also.

Now, Mr. Nelson in his statement to the Trial Examiner—I do not think intentionally—misled the Trial Examiner when he said that Mr. Keys had denied these things or denied knowledge of the things that were put in the War Labor Board hearing. But Mr. Nelson was talking about a State Court suit which had nothing to do with this, in which he filed a pleading testimony only, but which was never denied by anyone in connection with the Foreman's Association of America. In a very qualified sense, you might say there was a denial in a pleading of the State Court case of the allegation, but a State Court bill which had been brought by an individual, not by the Company, an individual by the name of Elwood Benton, who was a superintendent, and, by the way,
1166 he was not a falsely qualified superintendent, either; he was a superintendent who was beat up during the strikes and taken down to the Union Hall and forced to sign an application for membership in the Foreman's Association, with some thirty or forty-four men in the hall at the time.

Trial Examiner Jaffee: Mr. Donovan, I might shorten this by asking, do you dispute the fact that the Foreman's Association of America and Mr. Keys have made the claim that they are making, aside from the question whether the claim is valid or not?

Mr. Donovan: It would be folly to answer that no, because we all heard the claim, but I do not think the Examiner's treatment of it would take the sting out of

that portion of the record insofar as the Board is concerned.

Trial Examiner Jaffee: As I pointed out earlier in the hearing, in connection with an analogous situation, when the presiding official limits the ruling, there is the limitation. I tried to make any ruling as specific as possible and I tried to make the limitation as clear as possible. In order that there may be no possible misunderstanding and for further elaboration on it, let me restate it:

I thought I said then, and I say now, that the evidence came in and was permitted to remain for the
1167 sole purpose of indicating that the Foreman's Association of America struck this past spring with the expressed reason they now give through Mr. Keys. That is the claim they made, the position they took and what they said about it. Now, it is possible, of course, that those reasons are not correct reasons. They may be mistaken reasons, they may be false reasons, they may be reasons which are deliberately false. I am not passing on that question and I have not taken evidence on that point. If you want to show that the reasons that they say they gave were not the reasons they gave, I will permit that. If you want to show what the opposing claims of the companies involved were, I will permit you to do that. But in neither case have I permitted anything as to whether or not the reasons were, in fact, valid or invalid, aside from the question of whether or not they were the reasons given, the claims made and the position taken.

Now, that is one reason why I would deny your present request.

Another reason is this: While I will permit you to take from, cull from, take out of the 4000-plus pages of the transcript of that earlier hearing before the Panel of the War Labor Board or out of the innumerable exhibits which I presume came into evidence, such portions thereof as would affect the matter I have just referred
1168 to or would affect any testimony given by the witnesses, I do not think it would be proper for me to assume the burden, either personally or for the Board or for any court which may possibly hear the case later, to examine all those pages and all those exhibits to find

whether or not at some particular spot throughout that transcript and throughout those exhibits there may be something affecting the question, or, to use your own words, Mr. Donovan, "covering other matters in this hearing," without specifying what those things are. So your present request is denied for two reasons: First, because of the limited purpose for which the evidence was received; and, second, because of the fact that it would be improper to ask any fact-finder, or any reviewing court, to examine the mass of material you now suggest offering, without pointing out the particular portions which are applicable to the particular question at issue.

I point out again, if you want to point to any particular portion of that material which would indicate in fact that it was not the claim of the Foreman's Association of America that the strikes were caused for the reason the witnesses have given, or, if you want to point out conversely that the reasons given by the Company were something different, you may do that. Or, you may point
1169 to any other portion of that material to contradict or modify this witness' or any other witness' testimony put forth by the Petitioner.

Mr. Donovan: Well, Mr. Trial Examiner—

Trial Examiner Jaffee (Interposing): I may say in response to one of Mr. Nelson's statements that this type of hearing is also, at least to a degree, investigatory and exploratory.

Mr. Nelson: But the other one was purely so.

Mr. Karasick: May I make a statement, Mr. Examiner?

Mr. Donovan: I want to finish my offer of evidence first.

Mr. Karasick: Wait a minute, will you, Mr. Donovan? I want to make a statement at this point so it does not get mixed up with the other offers you may make. Is it all right, Mr. Donovan?

Mr. Donovan: Yes.

1170 Mr. Karasick: With respect to the second ground stated by the Examiner concerning the evidence offered by the Company and excluded, I would like to state that the elaborate method of procedure suggested by the Company is unnecessary in this case and that a much more simple and feasible method of procedure is possible,

namely, that the witness whose testimony in question has given rise to the proferred evidence of the Company which has just been excluded is due presently on the stand and can be questioned by counsel for the Company with respect to any other reasons than those stated by him in his prior testimony as to the foremen's claim relating to the causes of the strike. If after such examination the Company finds that the witness has not given fully the causes which the Company believes have previously been asserted by the Foreman's Association as the reasons for the strike, they can then introduce evidence, either through witnesses of their own as to such additional causes or they can follow the procedure at that point as suggested by the Trial Examiner in elaborating upon the second ground for excluding the evidence so offered, namely, by offering such portions of the transcript of testimony before the War Labor Board as reveal the reason stated by the Foreman's Association of America for the strikes in which it then engaged.

Trial Examiner Jaffee: I did not attempt to indicate
1171 the procedure I would follow in the event an attempt were made to impeach this or any other witness. That in turn would give rise to subsidiary procedures which I need not pass upon at the moment. There are various ways of impeaching a witness.

Mr. Karasick: Perhaps. I am not concerned whether the witness is impeached or not, I do not care. All I am saying is that if there is more evidence to come in before the Board on this point, that the Company deems material, there is a simpler way of getting at it than the complicated and elaborate process attempted here.

Trial Examiner Jaffee: Your remarks are all right but a wee bit premature.

Mr. Donovan: My offer included—By the way, I am perfectly willing to strike from my offer the descriptive phraseology "other relevant testimony." That would follow as a matter of common sense. I am perfectly willing to exclude that from my offer. I do want to say that I think that Mr. Keys has been allowed to state his claim and I think we should be allowed to state our claim. Our

claim is reflected in the offered evidence. We offer it to show the claim of the Packard Motor Car Company in this case that the strikes of the Foreman's Association of America were purely organizational strikes staged and synchronized to compel the attention of govern-
1172 mental agencies, which they got, and that the so-called grievances of the foremen, as they were supposedly listed in detail turned out to be, in fact, no grievances at all. I could carry those illustrations on almost indefinitely.

Trial Examiner Jaffee: It sums up to what you just said?

Mr. Donovan: In substance, that is putting it mildly.

Trial Examiner Jaffee: I am willing to take that as a statement of the Company's claim.

Mr. Donovan: I do not believe that that removes from the record the effect of the unanswered statement of Mr. Keys which he put as his claim as the reason for the strike. If the Employer Petitioner be not allowed to put in what is his claim for the reasons of the strike, which he can only do intelligently and completely by the offer I have made.

Trial Examiner Jaffee: I do not think so.

Mr. Donovan: Then it doesn't seem to me that we have had a hearing.

Trial Examiner Jaffee: I will permit you to put in evidence a statement sworn or unsworn as to the Company's claim, and only as to its claim, just as I have permitted the FAA to make a statement as to what the FAA claimed. I do not see frankly, why you are so concerned about this.

Mr. Donovan: Well—

Trial Examiner Jaffee: (Interposing) Except the
1173 fact that you seem to think there is some danger that the Board or some court may go beyond the limitations I have expressly stated for the record.

Mr. Donovan: We are unable to measure the effect on the Board or any reviewing agency in Washington upon the examination of the page of this transcript containing Mr. Keys' reasons for the strike of the foremen. We feel they should be answered and we feel they are so fallacious and erroneous for the reasons I have stated that the Trial

Examiner should receive conclusive and definite evidence of fact as claimed by the Petitioner Packard.

Trial Examiner Jaffee: I will permit you to put in counter evidence as to what you think is prejudicial to you. I will not permit it in the form you are now attempting to offer it.

Mr. Donovan: Will the Trial Examiner permit a statement in addition to the statement I have made—a prepared statement of the claim of the Petitioner Packard Company in this case, as a claim, such as you received Mr. Keys' form?

Trial Examiner Jaffee: I cannot answer that in advance. As a general proposition, yes. It would depend upon the language of the claim. It may be worded in such a way as to go beyond the way it is stated now.

Mr. Donovan: Our claim is that there is nothing
1174 wrong with the foremen as such that were causes for the strikes at all. It wasn't pay for the foremen. They testified that they were making up to seven thousand dollars a year, some of them. Some of them claim they had too much authority and some claimed that they did not have enough authority. Another claimed the discharged employee at Chrysler was the cause of that strike; when that was exposed it was found that the man was not discharged at all and so on ad infinitum. There is no basis for the claim of Mr. Keys. He just wants to get something in the record as to why the foremen are the forgotten men, without being specific, without tying it to anything specific. If we are going to try the issues, we ought to be able to meet them, we ought to be able to meet the claim, Mr. Keys' claim, that the foremen were badly treated. That is the inference from his testimony and that is the position we feel we are in.

Trial Examiner Jaffee: As I understand your position, then, the Company feels that there is no merit to any of the claimed grievances and that the strikes were purely organizational?

Mr. Donovan: That is right.

Trial Examiner Jaffee: Is that not sufficient for your present purposes?

Mr. Donovan: There again we get into that field
1175 where we feel we are unable to measure the effect the National Labor Relations Board will accord to that testimony.

Trial Examiner Jaffee: You asked a moment ago—if I understood you—whether I would permit a statement from the Company as to its claim. Now you think I ought to permit more than that. As far as the claim is concerned, wouldn't that be sufficient?

Mr. Donovan: I thought that I would like to get the Examiner's expression on that. In view of your ruling, I would like with your permission to confer with counsel briefly before we decide whether we have anything to add to this offer of evidence or not. It is an important point and we would like to take a little time.

Trial Examiner Jaffee: I want to ask you further, as I indicated before, you have made a statement in your offer, as you first expressed it, that material in the transcript of the War Labor Board—before the War Labor Board Panel covered other matters relevant to this instant hearing. Is that a fact?

Mr. Donovan: Well, it dealt with other matters, other than the causes of the May strikes. You remember you restricted the witness' answer to the May strikes. After some discussion you did not take in all of the strikes of the foremen. His answer was so confined on the record.

There were other strikes covered in the record.

1176 Trial Examiner Jaffee: I didn't understand that you made that offer.

Mr. Donovan: That is why I said I would waive that.

Trial Examiner Jaffee: Then it does contain other material?

Mr. Donovan: That is right. There is data in there to support our contention as to all the other strikes.

Trial Examiner Jaffee: That emphasizes one of the two reasons I gave for declining to receive the evidence you proposed to offer, particularly in the form you proposed to offer it.

Mr. Donovan: Before we have a consultation of counsel, Mr. Examiner, let me say our general statement of the

real reasons for the foremen's strikes, we would like to support by definite factual detailed matter so that there will not be any doubt about it in any shape of offered evidence Mr. Keys makes. Mr. Keys makes a statement without specific instances. He makes general statements. May we confer at this time?

Trial Examiner Jaffee: Yes, you may confer.

Mr. Karasick: May we be in recess while counsel is conferring?

Trial Examiner Jaffee: We will take a five minute recess at this time.

(Recess).

1177 Trial Examiner Jaffee: I should like to inquire, since the five minute recess has turned into thirty minutes, whether counsel is prepared to proceed?

Mr. Donovan: I think we are, Mr. Trial Examiner.

Trial Examiner Jaffee: Very well.

Q. (By Mr. Donovan) Mr. Keys, before getting back to the matter we were discussing before the recess, I want to read you an article from the Detroit News of May 19, 1944, at or around the time of the conclusion of the May strikes in which you are quoted as having said the following:

Mr. Nelson: I believe that is in the record.

Trial Examiner Jaffee: How long is the article?

Mr. Donovan: It is not an article; it is just two sentences.

Q. (By Mr. Donovan) In connection with the tremendous gains made for the Association in the strike, Mr. Keys said today:

> "Before the strike we didn't have a voice anyway, but in the last two weeks we gained for the foremen the right to appear before the National Labor Relations Board, the right to protest against discrimination, the right to certify disputes coming under the War Labor Disputes Act and a contract with the Ford Motor Company."

Were you correctly quoted there?

Trial Examiner Jaffee: Is it the second question you
1178 are asking now?

Mr. Donovan: I will withdraw the second question.

The Witness: Yes, those are facts.

Q. (By Mr. Donovan) Then this Reporter was, in general, accurate in this quotation he made of you?

A. I don't recall having made the statement, but the quotation is facts.

Q. You do not dispute anything in the quotation?

A. No.

Q. Now, referring to the portion of your publication, I mean by "your" the Foreman's Association of America, the publication "The Supervisor" and the article commencing on page 15 of "The Supervisor"—

Trial Examiner Jaffee: (Interposing) That is the document marked Company's Exhibit 2 for identification and withdrawn.

Mr. Donovan: I believe it is. Is that the one, Mr. Dahling?

Mr. Dahling: That is right. I believe you can also find the same thing in Petitioner's Exhibit 41. Is that not correct, Mr. Nelson?

Mr. Nelson: Yes.

Q. (By Mr. Donovan)— what purports to be as the article under the heading "Drama in the hearing room" and starting on page 15, it is there stated that "The
1179 Supervisor" prints the entire transcript of the hearing. You do recall the printing of the transcript of that hearing, do you not, Mr. Keys in the Department of Labor hearing room on May 17, 1944?

A. Yes, the transcript that has been introduced in evidence was not reproduced. That was a reproduction of several sheets of paper that were clipped together that I picked up in the War Labor Board Clerk's office.

Q. At any rate, this reports the proceedings which you published in The Supervisor, the statements printed were taken from that hearing in Washington?

A. That's right.

Q. It includes statements made by Chairman Davis and statements made by yourself, does it not?

A. It does.

Trial Examiner Jaffee: So long as Petitioner's Exhibit 41 is in evidence and appears to be the official transcript, why not use that?

Mr. Donovan: I only have two or three pages from this particular article and I am assuming that Mr. Keys has not changed the transcript and it would be a matter of a little time to locate them in the transcript.

Trial Examiner Jaffee: I know, but Mr. Keys has said that it is not an entire reproduction of that transcript.

Q. (By Mr. Donovan) In such portions as you did
1180 copy, Mr. Keys, were they portions of that transcript?

A. Not of the official transcript, no. Following the hearing in Washington, one of the clerks of the War Labor Board office provided me with several sheets of paper that were clipped together and I understood that was part of the hearing. I haven't compared those sheets with the transcript.

Mr. Donovan: Well, Mr. Examiner, more than ever, then, I would like to ask Mr. Keys as to statements in The Supervisor, as to whether or not that report is representative of his views, regardless of the transcript.

Trial Examiner Jaffee: Ask your question.

Q. (By Mr. Donovan) On page 16 of The Supervisor, of the issue in question, Mr. Keys, containing this article, "Drama in the hearing room" commencing on page 15, I quote as follows:

> "Mr. Keys: Well, Mr. Chairman, how can we resolve this situation when it is a bargaining right fight, you might say, and you say the Board cannot discuss that?"

Do you recall that as being included in your article? I want to be fair with you, Mr. Keys, you may examine the statement which I have read on page 16. See if you agree that that statement does appear there.

1181 Mr. Donovan: Perhaps you want to examine the statement I have underlined on page 16?

Mr. Nelson: It appears on page 9 of Petitioner's Exhibit 41.

The Witness: Now, your question is "Do I recall making the statement"?

Mr. Donovan: My question is, did you say it and is it true?

The Witness: I said it and it is true.

Mr. Nelson: I suggest that you complete the statement.

Mr. Donovan: Is it true?

The Witness: That I said it? Yes.

Q. (By Mr. Donovan): Is what you said true?

A. That is what I thought was true at the time I made the statement.

Q. Do you still think it is true now as of today?

Trial Examiner Jaffee: What troubles me, isn't the statement in the form of a question?

Mr. Donovan: No, it is in what might be called the form of an interrogation but it is not so here. There is a period here. (Reading.)

> "Well, Mr. Chairman, how can we resolve this situation when it is a bargaining right fight, you might say; and you say that the Board cannot discuss that."

1182 The witness should be required to answer whether or not as of today he considers that statement true that he made then.

Mr. Nelson: It is not a complete statement.

Mr. Donovan: That is a matter for cross-examination.

Mr. Nelson: No, it is not. When you ask a man whether a thing is true or not, and you give him an incomplete statement, you are unfair.

Trial Examiner Jaffee: I think the witness is entitled to see the transcript and then if there is anything he wants to add, he may.

Mr. Nelson: I hand the witness Petitioner's Exhibit 41; located on page 9 is the portion referred to by Mr. Donovan.

Mr. Donovan: You can ask him anything else he said at great length, if you like to, on cross-examination.

Mr. Nelson: I am not going to ask him anything. I want you to ask him a fair and full question.

Mr. Donovan: We will let the Examiner decide whether they are fair or not.

The Witness: I never did get to complete my statement. I continued on with what you read, with the following: "Now, do you want the foreman to come before the Board every time there is a discharge or a dismissal or a demotion—?" At that time I was interrupted by Chair-
1183 man Davis.

Trial Examiner Jaffee: The official transcript shows that after the word "demotion" there are a couple of dashes and then Chairman Davis interposed to say: "Oh, no," and then Mr. Keys is added following a couple more dashes, "or grievances?"

Mr. Donovan: Mr. Keys, with reference to either transcript that you hold or the excerpts here in the supervisor which now appears to correspond with the transcript, were you engaged in bargaining right fights as of that time, as of that date, May 17, 1944?

The Witness: Our fight has always been for bargaining rights.

Q. (By Mr. Donovan): Is there anything about the question you do not understand? I would like to have the question answered. I would like to have my question read direct to him, please.

Trial Examiner Jaffee: What question.

Mr. Donovan: The question I asked.

Trial Examiner Jaffee: Suppose you ask him again.

Mr. Donovan: I am not sure what the question is now. I think we should have the reporter read it back. I would like to have it read.

Trial Examiner Jaffee: The trouble is there are several questions and answers. You say "that question."
1184 I do not know what you are referring to.

Mr. Donovan: I think the reporter does and I would like to ask the exact and same question. I fear I might make an error if I do not make the same statement. I should like to ask the question in the exact same words. May I have the question read?

Trial Examiner Jaffee: Read back the last ten questions and answers. Mr. Donovan, I cannot see why you do not cooperate with my request. I requested that you restate

your question. I think it is a fair request and a reasonable one, too.

Mr. Donovan: I am not unfair. I am pressing an answer to a simple direct question. There is nothing that smacks of unfairness in it that I can attach to it that would enable me to get an answer.

Trial Examiner Jaffee: I suggest and rule that you ask the question over again.

Q. (By Mr. Donovan): All right. Mr. Keys, without reference now particularly to the transcript of this hearing which you hold in your hand, or to the excerpts therefrom, from The Supervisor your FAA magazine on page 16— thereon which excerpt now appears to correspond with the transcript, will you state whether or not as of May 17, 1944, you were, as you say in this statement, engaged in a bargaining right fight?

1185 A. I didn't say that we were engaged in a bargaining rights fight. That is where I cannot get together with your question. I was asking a question of the Chairman as to how we can resolve the situation when it is a bargaining right to fight, you might say.

Mr. Donovan: You have the word "to" before the word "fight." That word "to" is not in my copy. Is it in the transcript?

Trial Examiner Jaffee: It does not say "bargaining right fight." It says "bargaining right to fight."

Mr. Donovan: Then you were not engaged in a bargaining fight at that time?

The Witness: We have always been engaged in a fight for bargaining rights, but we were not on strike at that time because of that.

Q. (By Mr. Donovan): Then, you are still engaged in a fight for bargaining rights?

A. Yes.

Q. And that was the principal reason for your strikes, wasn't it?

A. Coming from the membership, yes, it was. I would say it was not authorized by the Association.

Q. And taking all the time you need to examine the transcript, will you also state whether or not you said at this hearing on that occasion (Reading):

1186 "All we are seeking from the employer is the right to sit down and discuss and through collective bargaining, eliminate our differences."

A. I don't know where it is in this transcript, but I said it.

Q. Did you also say that: "The ultimatum is, yes, but an order to bargain would be very welcome at this time"?

Trial Examiner Jaffee: I didn't get that.

Mr. Donovan: "The ultimatum is, yes, but an order to bargain would be very welcome at this time."

The Witness: Yes, I said that.

Mr. Donovan: Now, Mr. Keys—

Trial Examiner Jaffee: Off the record, please.

(Discussion off the record.)

Trial Examiner Jaffee: On the record. You may proceed.

Q. (By Mr. Donovan): Mr. Keys, referring to reporter's transcript of your answer of this morning to the question with reference to the reason for the foremen's strike, put to you by Mr. Nelson, your counsel, you answered as follows (Reading):

"Yes. Our Association, we believe, has been under constant attack by the employer since the Maryland Drydock decision. The members of our Chapters
1187 have repeatedly called upon the officers to permit them to stop demotions, discharges, transfers and so forth."

Do you recall making that statement?

A. Yes, I don't believe that is exactly the way I made it, but that is the substance of it, which is correct. I thought I said "permit them to strike."

Mr. Donovan: That is what I read.

The Witness: You said to permit them to stop demotions, discharges and transfers. I said, "The members of our Chapters have repeatedly called upon the officers to permit them to strike to stop demotions, discharges, transfers and so forth."

Mr. Donovan: Mr. Nelson, will you have Mr. Keys check as I read it back once more?

Mr. Nelson: Yes.

Mr. Donovan (Reading):

"Our Association, we believe, has been under constant attack by the employer since the Maryland Drydock decision. The members of our Chapters have repeatedly called upon the officers to permit them to strike to stop demotions, discharges, transfers and so forth. Because of the war effort we did not want our members to participate in the strike and we held it down pretty well for a full year following
1188 the Maryland Drydock decision and the members took it upon themselves to walk out and protest the attack on their organization."

Do you recognize that as a correct transcript of the statement you made this morning?

Mr. Nelson: I think the word "employer" should be plural, and that word should be "employers," otherwise it is a true and correct transcript.

Mr. Donovan: I will not object to that correction in the record. I will consent to that change in the record.

Trial Examiner Jaffee: Very well.

Mr. Donovan: Mr. Keys, you recall the companies that were before the War Labor Board Panel hearing started with the application of the Briggs Manufacturing Company, Chrysler, Packard, Aeronautical Products and Gar Wood Industries, do you not?

A. Yes, I recall that.

Q. They were companies included in the foremen's hearing before the War Labor Board Panel, were they not?

A. That is right.

1189 Q. (By Mr. Donovan) Now, taking these one at a time and starting with the Briggs Manufacturing Company, what demotions were you complaining of?

Trial Examiner Jaffee: What is the purpose of that question?

Mr. Donovan: Well, he is giving the reasons for strikes as the Employer's demotions, discharges, transfers, and so forth. That is what he says.

Trial Examiner Jaffee: I know, but I am asking you what is the purpose of the question?

Mr. Donovan: We want to find out how good these reasons for these strikes were. What were their motives.

Mr. Nelson: I will object to it.

Trial Examiner Jaffee: Objection sustained.

Mr. Donovan: I am unable to understand the Examiner precluding us from exploring the reasons given by this witness for the strikes.

Trial Examiner Jaffee: Do you say they did not make that claim, then?

Mr. Donovan: That who did not make the claim?

Trial Examiner Jaffee: The Foreman's Association.

Mr. Donovan: Well, have I not a right to show whether they did or not? I want this witness' testimony to show what demotions, what transfers, what discharges they are complaining of and then I propose to show, by reference to the transcript of the testimony in each case what the witnesses said and what the Companies' replies to those particular demotions, transfers, discharges were, and so expose the fallacious claim of demotions, discharges and transfers as being the reasons for the strikes, and my offer includes the evidence from that transcript in each case, if Mr. Keys does not give us the correct list to expose the fact that there was no merit to any of them as the cause of the strikes.

1190

Trial Examiner Jaffee: The objection is sustained.

Mr. Donovan: Are we precluded from exploring the answers of the witness as to the demotions, transfers and discharges on the part of the Employer without asking what demotions, promotions, transfers, and so forth, he means, what they were, who they were and when they took place?

Trial Examiner Jaffee: Mr. Donovan, I think it would be rather fruitless for me to keep repeating my reasons for my rulings. However, I will say it once more. If you care to show that those were not, in fact, the reasons asserted by the Foreman's Association at or about the time of those strikes, you may do so. If you want to go into the merits beyond that, you may not do so.

Mr. Donovan: Our offer of evidence at this time includes our wish to ask this witness what demotions, discharges

and transfers he means when he used the language
1191 demotions, promotions, discharges and transfers by the Employers as the reasons for the strike. We want to find out what demotions, promotions, transfers, and so forth he means, and we wish to expose those demotions, promotions, discharges, and transfers one by one, by the testimony in this case, as being incorrect.

Trial Examiner Jaffee: In other words, you are now inquiring into the merits of the individual demotions, transfers, and so forth?

Mr. Donovan: Yes, sir, we want to show that the reasons assigned by Mr. Keys as the reasons for the strikes have no basis in fact, and I think we are entitled to so show.

Mr. Nelson: I will object to that.

Trial Examiner Jaffee: Same ruling.

Mr. Dahling: May I suggest, Mr. Examiner, that to establish the reason for the strikes, of course, would be perfectly pertinent and to show these reasons did not exist and there are other reasons which are pertinent. If these are not the reasons, then there must be other reasons. You are precluding us from going into that phase of the case, although you are permitting the record to stand with the testimony of Mr. Keys accusing these companies of attacking his organization by bringing about and causing promotions and transfers presumably on the basis
1192 of these people having been Union men, or breaking up the Union for that purpose. The record, as it stands today, through Mr. Keys' testimony, is to that effect. We want to show those are not the reasons; that there are other reasons.

Trial Examiner Jaffee: Within the limitation indicated by the Examiner, the record only shows that the Foreman's Association makes certain claims. I have already indicated that you may show, among other things, that these were not, in fact, the claims of the Foreman's Association and also that the claims of the Company, or companies involved, were entirely different or contrary.

Mr. Donovan: We desire to show through this witness when he specifies what demotions, transfers and discharges, he means, that they have no basis in fact and we offer to prove that, and so leave exposed the blame or the reason

for the strike was purely one of organization, organizational strikes staged and executed solely for the purpose of organizing this Union.

Mr. Nelson: To each and all offers, I object.

Trial Examiner Jaffee: I see no object in prolonging the discussion further. I have already indicated the reason for the ruling. The extent to which I will permit testimony or not permit testimony, has been indicated. You have already indicated on the record, I think, that you do not dispute the fact that the Foreman's Association did, in fact,
1193 make the claims they now assert, although you dispute the validity of the claims. You have also indicated on the record that you now propose to go into the merits of each one of those reasons, not disputing, however, that those were the reasons given. I have indicated the extent to which you may go into that matter and the extent to which you may go in impeaching the witness. I think I need go no further.

Mr. Donovan: I take it we have an exception to the Examiner's ruling?

Trial Examiner Jaffee: That is right.

Mr. Donovan: We may or may not have further examination of Mr. Keys. I could let the Examiner know if the Examiner will bear with me a moment.

Trial Examiner Jaffee: Very well.

Mr. Dahling: If I may be permitted, Mr. Examiner, I would like to make a short offer of proof on behalf of the Packard Company, so there is no question in this record as to what we have in mind in insisting that we go into this testimony.

Certain reasons were given for the strike. The witness could have testified that they had complaints and, therefore, they struck. That would have satisfed the record, as far as the complaint existing; he could have testified he had complaints. He did not stop with his testimony
1194 there, but he deliberately went ahead, and, threw into this record what those particular complaints were. Now, you have ruled, Mr. Examiner, that that was proper testimony, although you say you will limit it to have the same effect as though he had only said, "We had complaints and therefore, we struck." Now, we are not

protected, as far as I see it, by that particular ruling. I would like to offer also testimony that we do not know that those were all good reasons, that he had for striking, or were the reasons that they had for striking. There were other things, other complaints discussed at that hearing that had no merit. Now, if the whole picture would disclose that these people have no reason for striking, why, then, of course, that goes to impeach the witness, the testimony of this particular witness as to having any complaint at all, which we are, I believe, entitled to show.

I would like to make an offer of proof with respect to each and every one of the complaints, or, rather, the so-called grievances which they produced against the Packard Company at the time of this hearing, and my offer would include the answer to each and every one of those complaints, disclosing that there was no substance to any of them, no substance at all.

Now, I am not going to fill up the record with things that the Examiner does not feel should be in, but I
1195 want to make that offer at this time as to Packard, and I want to also make the same offer with respect to each one of the companies, because he has used the term "employers"—not "employer" and I presume he means by that all of the Companies in which Mr. Keys' organization, the Foreman's Association of America, has chapters.

Mr. Nelson: Of course—are you through, Mr. Dahling?

Mr. Dahling: No, I am waiting now for the Examiner's ruling on this offer of proof.

Mr. Nelson: To each and every part of the offer, I object.

Trial Examiner Jaffee: You prefaced the offer of proof, Mr. Dahling, with certain argumentative material, which is strictly not an offer of proof. In that connection, you made certain observations, as to what you thought my ruling was. I think you have, in part, mistaken it. I have not said, nor did I intend to say anything that could be construed as meaning that the ruling was to the effect that the witnesses testified to the fact that the foremen had certain complaints. Among other things, I should like to point out to you that the testimony, in effect, is not that the foremen had certain complaints, but that the foremen made certain complaints of such and such a nature.

Now, with the limitation I have indicated, it may
1196 well be true that those complaints may be valid; they may be invalid, they may be mistaken, they may be false. You may show that they in fact did not take that position; that they did not in fact make—not have—but make those complaints. And you may further show that the Company took the position at that time, and takes the position now, and/or asserted that the real reasons were something else. You may also, if you desire, attempt to impeach or discredit this witness in any appropriate way. But the offer of proof you have now made, particularly in view of the content thereof, the form thereof and the breadth thereof, I think, is not proper, and it is rejected.

Mr. Dahling: You stated, in view of the form: I would, therefore, feel that I should make the offer of proof in another form, Mr. Examiner.

Trial Examiner Jaffee: I think the word was not a good one. I was thinking of the word "form" in the sense of breadth.

Mr. Dahling: If your ruling goes to the substance of the offer, the offer being to show that as far as these companies were concerned there was no substance to any of these complaints, and I might add another reason—of course, we have the right to attack the credibility of this witness, certainly, or—or that there was no substance to the claims made for the strikes.

1197 Trial Examiner Jaffee: I point out to you that Mr. Donovan stated that the Foreman's Association of America did take the same position at or about the time of the strikes.

Mr. Dahling: Yes, but there was no substance to the claim, and our offer of proof goes to the credibility of the witness' testimony as to whether anything really existed that was wrong and should be examined.

Trial Examiner Jaffee: Does it affect the credibility that they made such a claim?

Mr. Dahling: If a person makes a claim that is ridiculous, that is absurd, I think it has a bearing on anything that person testifies to.

Trial Examiner Jaffee: What other portions of the witness' testimony do you want to impeach?

Mr. Dahling: Of course, he has made other statements—I do not have the transcript in front of me and I do not believe it is necessary to disclose that at the present time, not having it before me for that purpose now.

Trial Examiner Jaffee: If you will point out to me what portions of the testimony you want to impeach this witness on, I will consider it.

Mr. Dahling: I did not suggest impeaching; I suggested as to the testimony generally of the witness; that there is no substance to the claim.

1198 Trial Examiner Jaffee: I can see an additional reason why that should not be permitted here; namely, the fact that you are attempting to impeach him with something which I think is a side issue in this case and which will involve a confusion of issues, which also involves the principle of the time it would take to receive such evidence, of which I made mention once or twice earlier.

Mr. Karasick: Mr. Examiner, I think there might be a possibility of having the parties agree upon the Company's record. Mr. Nelson has just suggested to me he might be willing to agree in part on the Company's position and so stipulate on the record. If we could have a few minutes discussion off the record, I think we could save considerable time.

Trial Examiner Jaffee: We have been off the record this afternoon for three-quarters of an hour.

Mr. Nelson: Well, I will be glad to state if what the Company wants is to have its position on the record, I would stipulate that the Company in the proceedings before the National War Labor Board took the position that what the Association wanted was recognition and collective bargaining and not grievance machinery. That is the position the companies took. They may state it their own way, but in substance, that is what it was. If they want that on the record, I will stipulate that they

1199 took that position throughout the proceedings.

Mr. Dahling: I believe our position is very clear on the record and the Examiner has ruled on it. I assume we have an automatic exception to it.

Trial Examiner Jaffee: Yes, of course. Is there anything further of this witness?

Mr. Donovan: We have no further questions.

Trial Examiner Jaffee: The witness is excused.

(Witness excused.)

Mr. Donovan: Mr. Trial Examiner, I wish to have it appear clear on the record that in the admission or concession, as the Trial Examiner has called it, of the fact that Mr. Keys made this statement, I want it clearly understood that all I am conceding or admitting is what everybody heard Mr. Keys say was the case. In other words, I am conceding that he has stated his claim for the strike, which is nothing more than an unsupported claim. As the record stands now, the witness has given reasons unsupported by any evidence whatsoever for the strikes of the foremen.

Trial Examiner Jaffee: I understood those claims were made earlier, as well, is that right?

Mr. Donovan: The question was addressed to him generally. I took it he was speaking as of the present time and any time it would have been true, at any time.

1200 Trial Examiner Jaffee: I think you said specifically that that is and has been the claim of the Foreman's Association of America.

Mr. Donovan: All I intended to concede was that Mr. Keys gave his reasons, which I clearly say are nothing more than unsupported statements. We all heard that, but it was an unsupported statement.

Trial Examiner Jaffee: I think you are mistaken in part about what you said, but in order to remove any doubt, I see Mr. Keys is still in the courtroom. Let me ask Mr. Keys: Mr. Keys, were the claims you have now made on this witness stand, in this hearing, the claims the Foreman's Association of America made or took at the Panel hearings before the War Labor Board?

Mr. Keys: Identically the same.

Trial Examiner Jaffee: All right.

Mr. Nelson: There is nothing further for the Petitioner.

Trial Examiner Jaffee: I understand the Petitioner rests.

Mr. Donovan: Just one second, Mr. Nelson.

Mr. Nelson: Well, I have said we rested, so let us get somewhere if we can. I think Mr. Iserman should sit at the counsel table. I have no objection to him counselling at all, but I think it should appear he is counselling

1201 the Company's counsel.

Trial Examiner Jaffee: I see nothing wrong with counsel counselling them. I probably would do the same thing myself, as an attorney.

Mr. Iserman: Counsel does not happen to have been counsel for all the companies in that War Labor Board case; he does not know all the facts involved in that case.

Trial Examiner Jaffee: I see nothing wrong in it. I should expect that.

Mr. Nelson: As I say, I have no objection to this illustrious array in the jury box aiding the Respondent in this case.

Mr. Iserman: I certainly like to be called an "array"; I am the only lawyer here, I think.

Mr. Donovan: Does counsel include the Press, who are also in the jury box?

Mr. Nelson: Some of them, yes.

Mr. Dahling: Mr. Examiner, I wonder if I could have Mr. Keys' answer to that last question you put to him? I am rather disturbed about that.

Trial Examiner Jaffee: Will you please read the question and answer back?

(Question and answer read.)

Mr. Donovan: What would be the point in that, Mr. Trial Examiner, in view of the Petitioner's counsel

1202 offering to disprove the claim — the Company's counsel, rather, offering to disprove the claim, whether he made it as of now, formerly, or when? Our offer of proof was to refute the claim, to show it was baseless.

Trial Examiner Jaffee: I assumed that by using the phrase "refute the claim", you intended it as being equivalent to showing it as baseless. For that reason, the

ruling is still the same. In other words, I have made my ruling several times. I think it is fairly clear.

Mr. Dahling: Mr. Examiner, now that the Petitioner has rested, I wish to make the following motion:

The Company moves that the petition of the Foreman's Association of America filed in this proceeding be dismissed for the following reasons:

One: The assistant foremen, foremen, general foremen, and special assignment men in the Packard Motor Car Company, that being the categories named in the petition, are not employees under the National Labor Relations Act.

Second: The assistant foremen, foremen, general foremen and special assignment men of the Packard Motor Car Company do not comprise an appropriate unit under the National Labor Relations Act.

Third: Collective bargaining by a unit composed of the assistant foremen, foremen, general foremen and special assignment men of the Packard Motor Car Company
1203 would not effectuate the purposes of the National Labor Relations Act or the policies of the Act.

Mr. Donovan: I would like to add to that, "or to the policies of other and equally important acts of Congress and public policy generally and the national welfare."

Trial Examiner Jaffee: Does that complete the motion?

Mr. Dahling: That completes the motion.

Trial Examiner Jaffee: Of course, I cannot concede, to begin with, that number four is any different from number three. I would assume that a proper interpretation of the purposes and policies of the Act include a proper regard for other—to use Mr. Donovan's phrase—other and equally important policies and acts of Congress—and perhaps more especially, the national welfare. However, as you gentlemen are doubtless aware, the Trial Examiner has no power to pass on a motion to dismiss the petition in these representation cases. He can only refer the matter to the Board for ruling, which, of course, means that for the purpose of determining how to proceed, I suppose you have to consider that so far as this Examiner is concerned,

you have not made a motion at all or perhaps that it has been overruled temporarily. At any rate, I am referring it to the Board for ruling. I suggest that you proceed with whatever you desire to proceed with.

Mr. Dahling: We appreciate, Mr. Examiner, that you
1204 have not the authority to rule, but we do wish the motion to appear on the record, at the close of the petitioner's case, so that there will not be any misunderstanding that that is the position we will take.

Trial Examiner Jaffee: Yes, I understand.

Mr. Dahling: I will call Mr. Denison.

ALSON G. DENISON,

a witness called by and on behalf of the Company, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Dahling) What is your full name, Mr. Denison?

A. Alson G. Denison.

Q. Where are you employed?

A. The Packard Motor Car Company.

Q. How long have you been employed by the Packard Motor Car Company?

A. Approximately 17 years.

Q. What is your present position with that Company?

A. Personnel manager and assistant secretary and assistant treasurer.

Q. How long have you held the position of assistant secretary and assistant treasurer?

A. About five years.

Q. And how long have you been personnel manager?

A. Two and a half years.

1205 Trial Examiner Jaffee: Are the assistant secretary and assistant treasurer two different jobs?

The Witness: It is one title but there is an "and" in there, they are not attached.

Q. (By Mr. Dahling) When was the Packard Motor Car Company organized, if you know?

A. It was organized in Michigan in 1903. The first Packard cars were built in Ohio and then it was moved to Michigan in 1903 and incorporated in Michigan in 1903.

Q. Where is the Packard Plant located at the present time?

A. The main plant is located here in Detroit at 1580 East Grand Boulevard.

Q. You also have a plant at some other location?

A. At the present time we have a plant in Toledo, Ohio.

Q. Is that plant owned by the Packard Company?

A. No, the plant is owned by the Defense Plant Corporation.

Q. And you are running the plant for the Defense Plant Corporation?

A. That is right.

Trial Examiner Jaffee: By the way, Mr. Nelson, I meant to ask you this before. What plants are you seeking in this petition?

Mr. Dahling: That is why I am bringing this out. I wanted to ask the same question.

1206 Trial Examiner Jaffee: I have a note here to ask Mr. Nelson, but frankly, I forgot it.

The Witness: May I interject? Mr. Dahling's question is addressed to the matter of plants. We have other operations—if you are thinking whether or not these other operations have foremen in there that may be covered by the petition—we want that clarified too.

Mr. Dahling: I am bringing in the fact that there is a Toledo Plant and I would like to know if that is supposed to be covered by their petition.

Mr. Nelson: The Toledo Plant of the Packard Motor Car Company is organized as Chapter 90 of the Foreman's Association of America. It is a separate chapter. This petition is filed and prosecuted only on behalf of Chapter 5, that is the Detroit plant.

Trial Examiner Jaffee: You are then asking only for a unit in the Detroit plant by that petition?

Mr. Nelson: In the Detroit plant by this petition, yes.

Q. (By Mr. Dahling) Mr. Denison, does the Packard Motor Car Company also have subsidiaries?

A. Yes.

Q. What are they?

A. Primarily, sales and service subsidiaries.

Q. And are they located—have you one located in Detroit?

1207 A. We have what is known as a Detroit Branch in Detroit for the purposes of sales and services. It is incorporated and attached to the main factory and it is considered as part of the main factory organization.

Trial Examiner Jaffee: I would assume—

The Witness: (Interposing) There are subsidiaries elsewhere in the country.

Trial Examiner Jaffee: I would assume you are seeking the unit in the Detroit plant and only in the production end of it.

Mr. Nelson: I believe that is right because the sales end of it is not very active at this time. That is as far as we go. We have not claimed there are any foremen in the service department as connected with the sales department. Those are not at the Detroit plant and we claim no jurisdiction over them by the present petition.

Trial Examiner Jaffee: I said "production", I believe I should have said maintenance as well.

Mr. Nelson: They did some repairs at the plant too, at the Packard Plant, that is, they did in normal operations at the plant, that we claim jurisdiction over. Outside the plant, we do not.

Trial Examiner Jaffee: How long—

Mr. Nelson: (Interposing) The service station is down here on Jefferson?

1208 The Witness: There are three of them, two on Jefferson and one on Woodward.

Mr. Nelson: And those service departments are departments we have claimed no jurisdiction over.

Trial Examiner Jaffee: Then the plant you claim a unit in, is located by itself at one place and consists of several buildings?

Mr. Nelson: I believe that is a fact, isn't that true?

Mr. Dahling: I will bring that out. It is quite all right, Mr. Nelson, I intended to do it.

Mr. Nelson: To answer the Examiner's question, these three service stations, we do not claim jurisdiction over.

Mr. Dahling: I wanted to clear the two points up first, as to the Toledo subsidiaries—

Trial Examiner Jaffee: (Interposing) Evidently I am getting ahead of myself.

Q. (By Mr. Dahling) Now, the Detroit Plant, I suppose—and I am using that to cover the entire operation in all of the buildings—does consist of a number of different buildings, does it not?

A. Yes, however, I may be slightly confused by the question in this respect: There is one main plant in one fairly narrow area and there are two other factories in operation in Detroit in other plants located within
1209 a mile or two of the main plant. Within the main plant there are a number of buildings. Does that answer you completely?

Q. Yes. Approximately how many buildings do you have? Have you any record on that? If you haven't, about what is the square footage of the building in the plant on East Grand Boulevard? That is the main plant, is it not?

A. Yes.

Q. About how many square feet do you have in that main plant layout there?

A. We have approximately four and one-half million square feet in the main plant on East Grand Boulevard.

Q. Then you have, you say, two other operations away from the main plant on East Grand Boulevard?

A. Yes.

Q. Where are they located?

A. One is located on Hernan and the other is located at the old Hupp Plant on Milwaukee Avenue, I believe.

Mr. Nelson: Near Harper?

The Witness: Yes, near Mt. Elliott, really.

Mr. Dahling: Do I understand you to cover these three locations in your petition or not?

Mr. Nelson: Will you permit me to ask the witness one question now by way of illustrating my answer? I am not trying to cross examine him at all and I believe he will understand that.

1210 Mr. Dahling: Yes, certainly.

Mr. Nelson: Mr. Denison, is the Hupp Plant and the former Bundy Tubing Plant—the Bundy and the Hupp Plants, we will speak of now—you have taken them under your jurisdiction in the last 30 or 60 days, haven't you.

The Witness: Maybe a little ahead of that, but not much.

Mr. Nelson: Will you fix the time? I may be misinformed on the exact time. Let us say 90 days, would that cover the active operation?

The Witness: Let's say within the last six months.

Mr. Nelson: And you are gradually transferring your operations to those buildings to occupy them?

The Witness: That is right.

Mr. Nelson: Together with such personnel as are needed there as you develop the places?

The Witness: Yes, although there are some cases of men being hired directly for those plants. You said, "transfer" and that is not quite one hundred percent true.

Mr. Nelson: Some transferred and some original help?

The Witness: Yes, mostly transferred.

Mr. Nelson: I am required because of the newness of this policy proposition and these transfers; to take the motion on my feet. I answered the question for the Examiner and counsel for the Company by stating

1211 that we claim the two plants as part of the bargaining appropriate unit with the main plant. They are not far away and they will be operated essentially as one when they get them going together. We claim them in this petition and claim the benefit of this petition for the supervisory force in the Bundy and former Hupp Plants.

Trial Examiner Jaffee: In that event, we will need a little more evidence on the relationship between the Bundy and the Hupp Plants and the main plant on East Grand Boulevard.

Mr. Nelson: There doubtless will be. I did not want to interrupt counsel for that purpose. I just merely indicated our position. He will now be able to examine his witness with the information I have given the Examiner and counsel, in mind.

Q. (By Mr. Dahling) Mr. Denison, how large is this Bundy Tubing plant you have taken over, approximately?

A. Around 100,000 square feet.

Q. Is that being operated at the present time?

A. There are a few operations in there, but not many as yet.

Q. It is expected, however, that the operations will develop in that plant?

A. Oh, yes.

Q. And now this other plant you spoke about that
1212 was about a mile and a half away?

A. That is the former Bundy Tubing Plant.

Q. There was another.

A. The Hupp Plant on Milwaukee near Mt. Elliott.

Q. That is in the process of development now?

A. No, there are operations in there now, it is nearly complete.

Q. It is nearly complete, you say?

A. The transfer of operations is nearly complete.

Q. How large a plant is that?

A. That has about 80,000 square feet.

Q. And it is intended that these two plants will be operated as a permanent part of the organization? Can you answer that?

A. That is a difficult question to answer. We have purchased the Bundy Tubing Plant owned by the Packard Motor Car Company. In the case of the Hupp Plant, I think the space is leased, I am not quite sure of that.

Q. Of course, you are going through uncertain times at the present time and you could not say now definitely whether this is a permanent change or not?

A. No.

Q. That would all depend, of course, on the course of the war and the course of business, I assume?

A. True.

1213 Trial Examiner Jaffee: Could you give us any estimate at all about how many employees you expect to be employed at these plants, roughly?

The Witness: At the Hupp plant I think it will run in the range of about 600 and at the Bundy Tubing Plant I believe it will be over one thousand.

Trial Examiner Jaffee: And you have at those plants general foremen, foremen, assistant foremen and special assignment man?

The Witness: I am quite sure there will be foremen in all three categories, but I do not believe there will be a special assignment man, for example, at the Hupp Plant with only 600 men, but that is something that I am not sure about either.

Trial Examiner Jaffee: Approximately in round figures, about how many of these foremen—using the broad term—would you expect that there would be in the case with the case of the 600 men and in the other case with the one thousand or so?

Mr. Dahling: Doesn't that depend a lot on what operations you put in finally?

The Witness: I am at a loss to hazard a guess. It would merely be a guess on my part.

Trial Examiner Jaffee: Your guess would be better than mine. Do the best you can.

1214 The Witness: Just taking the ratio, let us say, of something around the 40 men per foreman, you come out with an answer approximately right. It depends more on the operation. In some places there are fewer foremen and in others there are more.

Trial Examiner Jaffee: About forty would be about the average, more or less?

The Witness: I believe that would be about right.

Mr. Nelson: I wonder, while we are at it, if we might have the witness' figures on the number of men employed at the main plant.

Mr. Dahling: I was going to develop that.

Mr. Nelson: Excuse me, I did not mean to interrupt.

Trial Examiner Jaffee: I believe we have the information on that in Board's Exhibit 21.

Mr. Dahling: Yes, sir, I believe there is some there.

Q. (By Mr. Dahling) Mr. Denison, what was the peacetime business of the Packard Motor Car Company?

A. The production and sale of passenger cars primarily.

Q. Did you manufacture any other type of automobile such as a truck?

A. Not for some years.

Q. Did you at one time?

A. Yes, during the last war and after the last war. I believe until around 1921 or 1922—I think the truck
1215 business ended there.

Q. And the Company has engaged in the business of manufacturing automobiles from its inception, except for the war period of the first world war, I take it?

A. Except for what?

Q. For the period of the first world war.

A. That is right.

A. And this war?

A. That is right.

Q. What did the Company manufacture during the last world war, World War I?

A. Liberty engines for aircraft, primarily. There were some airplanes made too but I do not think many were produced before the war ended.

Q. When did Packard go into the small car business as such, approximately? Can you give us the date?

A. If by "small car" you mean the introduction of the Packard 120, that began about 1935.

Q. I hope I haven't insulted the Packard Company by calling it a small car. That is what I had in mind, the Packard 120 and that was about 1925?

A. No, 1935.

Trial Examiner Jaffee: You know what they say, ask the man who owns one.

Q. (By Mr. Dahling) Prior to that time, what type
1216 of car did Packard build? How would you describe the Packard?

A. Well, generally it is referred to as a big car. You understand, when we introduced the smaller car, we still made the bigger car.

Q. Prior to 1935 your factory was engaged largely in making what you call the bigger and higher priced car?

A. That is right.

Q. And of course, the operations in manufacturing—the operations were somewhat different in making such a car than in making these smaller cars, we will call them.

A. The quality was much greater and the production was much slower on the big car.

Q. What is the present business of the Company?

A. The manufacture of Rolls Royce aircraft engines and marine engines for the United States Navy.

Q. In what types of airplanes are these Rolls Royce engines used?

A. In the Curtis P-40, the North American P-51, known as the Mustang, in the British Lancaster, four-engine bomber, in the British and Canadian DeHaviland Mosquito, a two-engine bomber, and in the British Hurricane.

Q. Are those manufactured under a contract with the United States Government or with the British Government?

A. At the present time they are manufactured under contract with the United States Government entirely.

1217 Q. At one time you had a joint contract with the British and American Governments?

A. Yes, the contract called for producing a certain number for Great Britain and a certain number for the United States Army Air Force.

Q. You say that you manufacture a marine engine. That engine is for use in a boat or a ship?

A. In the PT boat, so-called, the Mosquito Fleet Boat. They are also installed in an Army Air Corps rescue boat, a crash boat. However, the greatest number of them go into the PT boats.

Q. And you furnish some of those for other countries?

A. Yes, practically every country in the Allied forces, have these PT boat engines, England and Holland and I cannot name them all.

Q. And that is the engine with which Mr. Wilkins testified he had something to do?

A. That is right.

Q. What is the extent of your business, not the number of engines. I understand that may be confidential—in dollar volume, can you give us that in round figures?

A. Yes, in 1941 the dollar volume of the Company was approximately one hundred million dollars, in 1942—this is from all sources, of course—in 1942 it was two hun-

1218 dred and six million dollars, in 1943 it was three hundred and forty million dollars and in 1944, we estimated to be something less than five hundred million dollars.

Q. Do you still have a substantial back-log of orders, war orders?

A. Yes, our unfilled orders at the present time are in the range of eight hundred million dollars.

Q. When did you first start manufacturing—let us say tooling up and getting ready to manufacture the marine engine?

A. In 1939.

Q. And what did you do at that time? Were you in production at all?

A. It was a matter of converting an engine which we made in very small quantity through the years—of converting that to a type of engine that the United States Navy wanted for so-called PT boats in the year 1939. That year was given over quite largely to preparing the plant and converting the engine to the changes they desired to make.

Q. When did you go into production on the marine motor?

A. I am quite sure that the first engine was built in early 1940, but that is not a positive statement.

Q. When did you start working on the Rolls Royce Engine?

A. That was in the summer of 1940, that the contract was completed and as I recall it, we started immediately on the tooling job, the job of converting British
1219 blueprints so that they could be understood by American workers and generally getting ready, to produce the engine, building plants, offices and so forth.

Q. After Pearl Harbor, did you immediately go into full production—as full production as you could on these two items, the marine engine and the Rolls Royce engine?

A. That assumes, Mr. Dahling, that we did not go into as full production as we could before Pearl Harbor. We did. The whole program was accelerated right from the beginning; when Pearl Harbor came it so happened that we were about on the verge of mass producing the aircraft engine, fortunately.

Q. And you have increased your production on aircraft engine? Has it gone up?

A. Almost consistently every month from the beginning.

Q. You were also then, I take it, in production of marine engines by December 7, 1941?

A. Yes.

Q. When did the last car go off your assembly lines?

A. It would be to my recollection, February or March, 1942. Pearl Harbor was December '41, as I recall it, and it was within two or three months of Pearl Harbor anyway.

Q. Have you manufactured any automobiles since that time?

A. Oh, no.

Q. Would you say that you are one hundred percent in war work now?

1220 A. Yes.

Q. Now, have you gathered together some figures as to the number of employees employed by the Packard Motor Car Company commencing back at the year 1938?

A. Yes, I have some figures. Taking the figures as of June 1 of each year, in 1938 the total number of hourly and salary employees on our roll was 8,200; in 1939, the same date, 9,714; in 1940, 9,223; in 1941, 10,944; in 1942, 20,890; in 1943, 22,659; and in 1944, 39,020.

Q. That is as of June of each year?

A. That is correct.

Q. And that would include not only the employees who might be in the manufacturing departments, but that is both the productive and non-productive departments and also your office employees, isn't it?

A. That is the total number of employees, wherever they may work in the factory.

Q. What is the approximate number of employees in those categories at the present time?

A. As of November 30, 1944, 32,533.

Q. And that decrease has been brought about by what?

A. A substantial portion of it was brought about by no hiring, for several months, beginning in the middle of the summer and the balance by layoffs that occurred about a month and a half ago.

1221 Q. And that was due to a cutback in production?

A. In contracts, that is contract. I would like to make this clear, Mr. Dahling. This is at the Detroit fac-

story only and does not include the total help for Toledo or any subsidiaries, that is, in these figures.

Q. At that time you did not have the Bundy Tubing Plant and the other Hupp Plant?

A. We have in the figure quoted for November 30 of this year.

Q. You included those two plants, which are in Detroit separated from the main plant on the Boulevard?

A. That is right.

Q. Mr. Nelson would like to know the distance of the Hupp Plant from the main plant. Could you give that, approximately?

A. Well, from the closest point of our plant to the Hupp Plant, I do not believe it is more than a quarter of a mile, but from the main office to the Hupp Plant it may be three-quarters of a mile, or even a mile.

Q. How many acres does your main plant cover, approximately?

A. I don't know whether I can talk in acres or not.

Q. I thought you told me—

A. (Interposing) Yes, I have it here. The main plant covers 82.3 acres.

Q. And how does it compare in space to the Willow Run Plant?

1222 A. In floor space the Packard factory is about one-third larger than the Willow Run.

Q. But, of course, it is not all under one roof?

A. There are many floors in some buildings, yes.

Q. Do you have any information with respect to the number of supervisory employees for the same period that you gave the number of employees, generally?

A. Yes, in June, 1938, June 1st, 313, and for the same period each year, 1939, 342; 1940 there were 358; 1941, there were 449; 1942, there were 662; 1943, there were 835; 1944 there were 1,194.

Trial Examiner Jaffee: As of when?

The Witness: June 1 of each year.

Mr. Nelson: May we understand that that includes assistant foremen at the bottom?

Q. (By Mr. Dahling) What do these figures include? What ranks of supervision?

A. All supervisors, salary and hourly.

Q. And that would include general foremen?

A. Yes.

Q. Foremen?

A. Yes.

Q. Assistant foremen?

A. Yes.

Q. Special assignment men?

1223 A. Yes.

Q. Would it also include supervisors in your office?

A. Yes.

Q. Then it is a composite picture, and it does not include just those in the manufacturing division?

A. That is right.

Q. You do not call the people who are in your office force foremen or general foremen or assistant foremen, do you?

A. We generally refer to them as supervisors.

Q. Do the figures you have given me include the superintendents or assistant superintendents?

A. Yes.

Q. Do they include division managers?

A. It includes the president of the Company.

Q. In other words, that is a full list of supervision that you have given me?

Trial Examiner Jaffee: From top to bottom.

The Witness: Yes.

Mr. Karasick: What is it as of November 30?

Q. (By Mr. Dahling) Would you have any estimate as to what it is as of November 30?

A. I haven't got that. The only thing I can give is the figure submitted in the National Labor Relations Board—

Mr. Karasick: (Interposing) The paper you gave us
1224 is effective as to assistant foremen and all classifications?

The Witness: As called for by Petitioner's petition, general foremen, foremen, assistant foremen and special assignment men.

Mr. Dahling: I would like to have that in the record. What does that report disclose?

The Witness: A total of 1106.

Mr. Dahling: And they are broken down in what manner?

The Witness: In totals.

Mr. Karasick: May I suggest that it is in Board's Exhibit 21?

Mr. Dahling: I appreciate that. I very frequently like to have things in the record if they go along in chronological order, if you have no particular objections.

Mr. Karasick: I have none.

The Witness: General foremen, 125; foremen, 643; assistant foremen, 273; special assignment men, 65.

Q. (By Mr. Dahling) That was as of what date?

A. December 2.

Q. How is the plant divided at the present time? Do you have a number of large divisions?

A. Yes, something in the range of twenty major manufacturing divisions or divisions related to manufacturing.

Q. Is your aircraft separated from your marine engine? Do you have separate divisions for each of those?

1225 A. Yes.

Q. That is, you have two main divisions, one aircraft and the other marine division?

A. Correct. There is some work done in the marine division, the marine engine division for the aircraft division but I do not believe there is any done in reverse.

Q. What designations do you use for these two main divisions there?

A. Designations?

Q. Yes.

A. Aircraft engine division and marine engine division.

Q. I saw a car marine division.

A. Yes, that is because the marine engine contract was our first contract in 1939. At that time we were making automobiles and there was just attached to the operations going on at that time—when the aircraft contract came along in 1940, a separate division was set up that left the car and marine division as one division and the aircraft as a new division. Eventually, car manufacturing dropped out and we did not drop the name off the division. That is all there is to it.

Q. Starting with two main principal divisions, you have other divisions in the plant?

A. Under the divisions?

Q. Yes.

1226 A. Yes.

Q. Approximately how many do you have?

A. Approximately 20.

Q. And you call them divisions, do you not?

A. Yes.

Q. And then, do these divisions have departments?

A. Oh, yes.

Q. And about how many departments would you have, approximately?

A. The total number of departments is probably about 300.

Q. When the foremen witnesses were testifying that they worked in a certain department, they would be referring to one of these 300 departments you have just testified?

A. Correct.

Q. Mr. Denison, do you have any organization chart of the Company?

A. Yes.

1227 Mr. Dahling: May we have a moment to locate some exhibits, Mr. Examiner?

Trial Examiner Jaffee: Certainly.

The Witness: I have a set here.

Mr. Dahling: Will you mark these Company's Exhibits 22, 22-A through 22-J, and 23-A through 23-I?

(The documents referred to were marked for identification as Company's Exhibits Nos. 22, 22-A through 22-J; 23-A through 23-I.)

Q. (By Mr. Dahling): Mr. Dension, I show you papers marked Company's Exhibits 22, 22-A through 22-J, for identification, and ask you what they are?

A. Exhibit 23 is an organization chart of the overall Aircraft Engine Division, covering everything. 22-A is a chart of the Army Airforce staff connected with the Aircraft Engine Division; 22-B is a chart of the "C" Division, machining crankcase and miscellaneous parts for the Aircraft engine; 22-C is a chart of the "D" Division, a machining division for major parts for the Aircraft engine; 22-D is a chart of the "F" and "K" Division, a division for the assembly and test of the Aircraft engine; 22-E is a

chart of the "G" Division, a division for the manufacture of gears for the Aircraft engine; 22-F is the M. P. Division, the Master Mechanics' Division for the Aircraft Engine Division; 22-G is a chart of the division, the
1228 Inspection Division in the Aircraft Engine Division; 22-H is a chart of the purchasing and production control and spare parts and traffic groups of the Aircraft Engine Division; 22-I is a chart of the "P" Division, another machining division on aluminum castings; 22-J is a chart of the "U" Division, a machine division of miscellaneous parts and automatic screw machine.

Q. Where were those charts prepared, Mr. Denison?

A. At the Packard Motor Car Company.

Q. They were prepared by the Packard Motor Car Company?

A. Correct.

Q. Are those the official organizational charts of the Aircraft Division?

A. Correct.

Q. Would they include all of the charts of that particular division or might there be some missing?

A. Well, there is no engineering chart here. These are the charts that would relate particularly to the group petitioned for by the Foreman's Association. There may be several others missing.

Mr. Dahling: I will offer in evidence Company's Exhibits 22, 22-A through 22-J.

Mr. Karasick: The Board would like to see a copy of those.

Mr. Dahling: Certainly.

1229 Trial Examiner Jaffee: By the way, are there any general foremen, foremen, assistant foremen or special assignment men in the Engineering division?

The Witness: I don't believe so, Mr. Examiner.

Trial Examiner Jaffee: All right.

Mr. Dahling: I find through some confusion we do not have enough copies of those charts. We will supply them.

Mr. Karasick: No objection.

Trial Examiner Jaffee: They are received.

(The documents heretofore marked for identification as

Company's Exhibits 22, 22-A through 22-J, were received in evidence.)

Q. (By Mr. Dahling) Mr. Denison, these charts are changed, from time to time, are they not?

A. Yes.

Q. A chart that was up to date today might have some changes made on it tomorrow?

A. The organization might be changed, but the chart might not be changed quite that rapidly.

Q. There would be a later printing of the new form, I take it?

A. When there are a sufficient number of changes to justify the printing, yes.

Q. The date when these charts were issued appears on the lower right-hand corner of this chart?

1230 A. Yes.

Q. Mr. Denison, I show you papers marked Company's Exhibits 23-A to 23-I, inclusive, and ask you what they are?

A. Chart 23-A is the organization—

Trial Examiner Jaffee: Just a moment, off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

The Witness: 23-A is the organization chart of the overall Car and Marine Manufacturing Division. 23-B is the chart for the "B" Division, which is the foundry; 23-C is the chart for the "E" Division, which is the forge; 23-D is the Inspection Department of the Car and Marine Division; 23-E is the Master Mechanics' Division of the Car and Marine Division; 23-F is the Plant Engineering Division of the Car and Marine Division; 23-G is the purchasing, production and control spare parts and traffic division of the Car and Marine Division; 23-H is the chart of the "S" Division, which is a machining division for the Marine Engine; 23-I is the chart of the "Y" Division, which is the machining and also assembly and test Division for the Marine Engine. Mr. Dahling, I would like to make a correction. You asked me the question

1231 whether the charts for the Aircraft Engine Division included all the divisions in which there might be

general foremen, assistant foremen, foremen and special assignment men. I am reminded by the Marine chart that there is a plant engineering division in the Aircraft Engine Division that would have in it general foremen, foremen and assistant foremen, that is not in there.

Q. Was that left out for any particular reason?

A. No.

Q. We can get that chart to complete the picture?

A. I am not sure that there is such a chart, because the major portion of the plant maintenance work is done by the Car and Marine Division Department. There are some on the Aircraft Engine but it is a minor part of the work.

Q. Can you determine, however, if there are foremen or assistant foremen in that department and whether you do have a chart of that department?

A. Yes.

Q. If you do, you could produce that?

A. Yes.

Trial Examiner Jaffee: Mr. Nelson, you had some colloquy today and there has been some testimony just now to indicate that there may be people called general foremen, and so forth, in other divisions of the Com-

1232 pany, as well as other plants of the Company, and I would appreciate it if within the next day or two you could get together on paper precisely what the limits of your unit claim are so far as other plants are concerned and other divisions are concerned; that is, what you claim and what you do not claim. Could you do that, do you think?

Mr. Nelson: I do not quite understand what you mean.

Trial Examiner Jaffee: Mr. Denison just points out that there are general foremen, and so forth, in the plant Engineering Division of the Car and Marine Division. I am not positive at the moment whether you claim such men in the scope of your petition.

Mr. Nelson: We do, without any hesitation at all.

Mr. Dahling: Mr. Examiner, these are listed in the list of the general foremen, foremen, and so forth, which we presented to the witness.

Trial Examiner Jaffee: In what list, do you mean?

Mr. Dahling: We were requested to present a list of

general foremen, foremen, assistant foremen and special assignment men in accordance with the designation on the petition. We were requested by the Regional Board, and that is in Board's Exhibit 21. That is, that exhibit includes these people who are on the records of the

1233 designations which appear in the petition.

The Witness: Regardless of the division they are in. If there does happen to be a chart missing, that makes no difference, so far as this list is concerned that was submitted.

Trial Examiner Jaffee: I see. At any rate, in view of the testimony, when Mr. Denison first came on the stand with reference to the service and sales, subsidiaries, with reference to the Bundy Tubing plant, the Hupp plant, and so forth, if you could indicate, in the next day or two in black and white, what you do cover and what you do not cover, geographically, so to speak, that might help.

Mr. Nelson: Very well.

Q. (By Mr. Dahling): Are the charts which are marked for identification Company's Exhibits 23-A to 23-K, inclusive, the charts of the Car and Marine Manufacturing Division of the Packard Motor Car Company?

A. Yes.

Q. They were prepared by the Company?

A. Yes.

Q. And are used by the Company as charts?

A. Correct.

Q. Those are copies of the official or are the official charts?

1234 A. Correct.

Trial Examiner Jaffee: And are prepared as of the dates indicated thereon?

The Witness: Yes, sir.

Trial Examiner Jaffee: 23-A is the overall chart for the Car and Marine Division?

The Witness: Yes, sir.

Trial Examiner Jaffee: And corresponds to Exhibit 22, which is the organization chart, overall, of the Aircraft Engine Division.

The Witness: That is correct, Mr. Examiner.

Mr. Nelson: May I inquire at this time, Mr. Dahling,

whether these charts include those men who are in the Hupp and Bundy plants?

The Witness: In that men are being transferred from some of these divisions to that plant and the probability is that the plants will house a complete division; the symbol will probably be transferred.

Mr. Nelson: So these charts as of the date they bear cover the main plant, the Bundy and the Hupp plants?

The Witness: I think that is a fair statement.

Mr. Nelson: That is what I understood.

Mr. Dahling: I will offer Company's Exhibits 23-A to 23-I in evidence.

Mr. Karasick: No objection.

1235 Trial Examiner Jaffee: Received.

(The documents heretofore marked for identification as Company's Exhibits 23-A to 23-I, inclusive, were received in evidence.)

Mr. Dahling: May I retain these exhibits until I mark the sets with the proper designation, so I will know that we are referring to the proper exhibits?

Trial Examiner Jaffee: Surely.

Q. (By Mr. Dahling): Do you have other divisions that are not shown on these charts?

Trial Examiner Jaffee: Let us get one thing clear. We have used the word "division" in two senses. For instance, the Aircraft Engine Division and the Marine and Car Division, those are divisions where we have used the word "division" in its broadest sense.

Mr. Dahling: Yes, could we call the Aircraft and Marine car Division the two large divisions and the other divisions the smaller divisions?

The Witness: That's perfectly true. We use the term "division" when it is only a subdivision to another division.

Q. (By Mr. Dahling): You have only the two large divisions, the Car and Marine and the Aircraft Engine Division in Detroit?

A. That's true.

1236 Q. Then you have the other subdivisions of those two large divisions which you designate in what manner, by letters?

A. By letters.

Q. Now, do you have any of these smaller or subdivisions in the Packard plant here in Detroit which are not shown on these exhibits 22 through 23-I?

A. The charts that we showed, Mr. Dahling, were manufacturing division charts. Now, the subdivisions we show under the manufacturing division, I think, generally, are complete. However, there are other major divisions of the Company, such as the accounting, sales, advertising, engineering, industrial relations and administrative.

Q. Those are not included in these exhibits which have been offered in evidence here?

A. Only in the chart where a few of these divisions are, maybe like the manufacturing division, such as accounting and assembly.

Trial Examiner Jaffee: In other words, it overlaps, so to speak?

The Witness: That is correct.

Q. (By Mr. Dahling): Would you say, then, that the charts which have been introduced into evidence cover the manufacturing divisions of the Company?

1237 A. Yes, sir.

Trial Examiner Jaffee: And such administrative divisions, as well, whose work, in part, applies to manufacturing?

The Witness: Yes.

Q. (By Mr. Dahling): These others that you listed where you have no charts, did you list all of them?

A. I believe I did. I can't think of any omissions at the present time at least.

Mr. Dahling: I wonder if we can adjourn, Mr. Examiner?

Trial Examiner Jaffee: It is now five minutes to five, and to assure you the Examiner is not nearly as hard as he sometimes likes to feel he sounds, we will recess at this time until 9:30 tomorrow morning.

(At 4:55 P. M., the hearing in the above-entitled matter was adjourned to Thursday, December 28, 1944, at 9:30 A. M.)

1238

Room 737, Federal Building
Detroit, Michigan,
Thursday, December 28, 1944.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 A. M.

Before:

Samuel H. Jaffee, Trial Examiner.

1240

PROCEEDINGS.

Trial Examiner Jaffee: As I indicated to you gentlemen earlier, off the record, I am required to handle another hearing this morning, at least for a short time, and with your consent, we will recess this hearing until ten-thirty A. M.

(At 9:35 A. M., the hearing in the above entitled matter was recessed until 10:30 A. M.)

After Recess.

(At 3:00 o'clock P. M., the hearing resumed.)

Trial Examiner Jaffee: I think the record already shows, gentlemen, that we did, at the opening of this morning's session, adjourn until 10:30 in order to permit the Examiner to engage in other official duties, which the record indicates. As it developed, further time was necessary and the recess until 10:30 continued, and the patience of counsel continued until the present moment, which appears, according to the clock in front of me, to be three o'clock. I gather counsel are now prepared to proceed with the rest of this hearing.

ALSON G. DENISON

1241 resumed the stand as a witness by and on behalf of the Company, being previously duly sworn, was examined and testified further as follows:

Direct Examination (Continued)

Q. (By Mr. Dahling) Mr. Denison, at the close of the hearing yesterday, Company's Exhibits 20 to 22-J and

23-A to 23-I were admitted into evidence, these exhibits being certain organizational charts of the Packard Motor Car Company. I believe you testified at that time that these are not all of the charts, is that correct?

A. Yes, sir.

Q. They are produced as samples of the charts in what particular part of the Company, would you say, the manufacturing?

A. The manufacturing organization, yes.

Q. Where are most of the foremen who are listed on the petition in this case, where do they work?

A. Nearly one hundred percent in the manufacturing organization.

Q. Now, you have testified that there are two main divisions, the aircraft and the car and marine. Have you a list of the so-called manufacturing divisions in the two main divisions?

A. Yes.

Q. What are they and will you describe them briefly?

1242 A. In the aircraft engine division there is the F subdivision, the K subdivision and, of course, the work of these divisions is listed on the organization chart; I am not repeating it here, therefore. The C machining division, the D machining division, the G machining division, the P machining division, and the U machining division. Those, in general, comprise the productive divisions.

Q. That is the productive divisions of the manufacturing end of the business?

A. Correct. Then the non-productive divisions, in general, include the inspection division, the master mechanics division, the standards division, the plant engineer and maintenance, the production control division, the traffic division, the metallurgical division, the salvage division, the procurement investigation division, the quality control division and the general manufacturing administrative division.

Q. That is the general manufacturing administrative division in that particular aircraft engineering division?

A. Correct.

Q. The last that you listed you called non-productive. That, as I take it, means they are tied in with your pro-

ductive divisions of that main aircraft engineering division, is that right?

A. Correct. In general, they service the productive
1243 divisions.

Q. What is your setup, then, on the car and marine main division?

A. In the car and marine, we have the B division, the foundry division; the E division, the forge shop; the L division, a machining division; the S division, a machining division; the Y division, a machining division and assembly and test division. Those comprise the productive divisions. The non-productive are the inspection, the master mechanic, plant engineering production, production control and traffic.

Q. Now, I believe you testified as to the—

A. (Interposing) Excuse me, Mr. Dahling, there is also a metallurgic division in the car and marine, a salvage division, a hospital division and a general manufacturing administrative division.

Trial Examiner Jaffee: Is that hospital division restricted solely to the car and marine division?

The Witness: It services both divisions; it is in the car and marine division, but covers the aircraft division too.

Q. (By Mr. Dahling) In addition to that, you would have the general administrative, the clerical division, I would term it, would you not?

A. You are referring to divisions over and above
1244 the manufacturing division?

Q. Yes.

A. Yes, there is engineering, sales, accounting, as I stated yesterday, and general administrative, advertising and industrial relations.

Q. Now, I think you testified yesterday as to the dollar value of the output of the Packard Motor Car Company. Do you have any figures on the value of the tools, the inventory of the tools that are being used?

A. The dollar value of the tools, dies, machines and equipment at the present time is approximately one hundred twenty-two million dollars. The dollar value of the inventory at the present time is approximately fifty-six million dollars.

Q. Mr. Denison, approximately how many foremen of the category listed on the petition in this case did Packard employ in its peacetime operations, say around the years 1938 or 1939?

A. In 1938 we had approximately 254 men of all categories.

Q. That would include general foremen, foremen, assistant foremen and special assignment men?

A. Yes, but there were not very many special assignment men at that time.

Q. You have increased the number of special assignment men largely due to your war operations?

1245 A. That, and the increase in the size of our operations.

Q. Where did you find your additional assistant foremen that you needed when your manufacturing increased due to the war orders?

A. Almost entirely from within our own organization. Generally from the hourly rate ranks.

Q. Is that true also of the foremen who may have been added to your list of supervisors due to the increase in your business?

A. Yes.

Q. They were recruited from the ranks of the assistant foremen?

A. In general, yes.

Q. When you say in general, would you have any idea, percentagewise, just roughly?

A. There are probably some foremen that came from the hourly rate ranks directly to the status of foreman, but of all categories of foremen, whether assistant foreman, foreman, or even a general foreman, since the war program started practically 99.9 percent have come from the rank and file within our own plant.

Q. That is, you did not go outside of your plant to hire in these foremen and general foremen?

A. I don't think there are five exceptions to that rule, Mr. Dahling.

1246 Q. Of course, many of the present assistant foremen or foremen would have been ex-members or are ex-members of the UAW?

A. Yes.

Q. And they were members of the UAW when they were promoted to the job of assistant foremen in the first instance?

A. Yes, because our UAW contract was initiated in 1937, before the war program.

Q. That is the first contract you had with the CIO?

A. Yes.

Q. That contract has been amended, has it not?

A. Yes, several times.

Q. The last contract, I believe, is in evidence here?

A. Yes, I believe it is.

Q. Have you investigated the pay differentials between foremen and the hourly rated workers?

A. We investigated that for the War Labor Board hearing, Mr. Dahling, and found this to be the situation: The average earnings per month of all categories of foremen, including special assignment men, for the period from January through April of this year was $496.54.

Q. That is the take-home money?

A. That is correct.

Q. And that would include the overtime?

A. Correct. You asked me for the comparison be-
1247 tween that and the hourly rate. That average per month is sixty percent higher than the average of the hourly rated employees in the plant for the same period of time. We made the further investigation of the comparison of that earning with the highest earning of the man in the department under each foreman.

Q. In that connection, did you take each one of the departments and select the highest paid man?

A. We took each supervisor, the man who earned the highest amount of money in those four months reporting to that supervisor.

Q. When you say supervisor, you are referring to whom?

A. General foremen, foremen, assistant foremen and special assignment men. The foreman was 26 percent higher than the highest rated employee.

Q. It appears from the report that was made to the National Labor Relations Board listing the number of foremen of the various ranks that you have set assistant fore-

men on an hourly rated basis. Can you explain the reason for that or how that has come about and continued?

A. It has been the practice in the car division, down through the years, to place many assistant foremen on an hourly rate basis.

Q. That was prior to the war?

A. Oh, yes, many years prior to the war, and when
1248 the war came along, those divisions, of course, remained in existence, carrying on as they had before, and those assistant foremen on the hourly rate remained there. As the aircraft engine division developed, a slightly different policy was followed, of placing all foremen, assistant foremen, particularly, on a salary basis. The car and marine division, though, wasn't changed. It had been that way before and it wasn't changed at the time.

Q. Is there any particular reason why it is not changed now?

A. No, there just has been no disturbance in regard to it, no complaint in particular, and it was just left as it was.

Q. Now, have you prepared a classification of the salaries of your salaried foremen to show the salary range?

A. Yes.

Q. Will you tell us what this range is and what information you secured on that?

A. The range paid to the general foremen at the present time, the base salary, not including overtime, runs from $280.00 a month to $375.00 a month. Foremen, from $220.00, base pay, to $370.00 base pay. Assistant foremen, from $220.00 to $315.00 base pay.

Trial Examiner Jaffee: If I understood you correctly, then, some assistant foremen make more than some
1249 general foremen?

The Witness: Correct, depending upon the department they are in. It might be the tool room or some highly skilled division or department; whereas, the general foremen might have—I think you mentioned yourself—supervision over a group of sweepers.

Q. (By Mr. Dahling) Now, that would be based upon a forty hour week, would it not?

A. Yes.

Q. At the present time, how many hours are you working per week?

A. In the manufacturing division there is a schedule of 50 hours a week.

Q. Prior to that schedule of 50 hours a week, how many hours were you working?

A. As of about last September, we were working 55 hours a week, and about a year previous to that we were working 63 hours a week.

Q. Your 50 hour week, how is that set up, five days at ten hours?

A. Yes, at the present time.

Q. There is no work in the manufacturing divisions on Saturday and Sunday, then?

A. In general, there isn't.

Q. Prior to the war, what was the policy with re-
1250 spect to the paying of overtime to salaried foremen?

A. There was no pay for overtime.

Q. You were on a forty hour week in those days?

A. Yes.

Q. Was there any overtime worked?

A. Very little.

Q. Well, if a man worked overtime consistently, even in those days, what was done?

A. I don't recall of any adjustments being made.

Q. You do not recall of much consistent overtime either?

A. No.

Q. After you got into the war program, did you run into overtime for foremen?

A. Oh, yes, a substantial amount.

Q. What was done about that?

A. Prior to Pearl Harbor, where a foreman or other supervisors for that matter, who hadn't been receiving overtime and was excluded or exempt under the Fair Labor Standards Act, was asked to work a consistent amount of overtime, his pay was adjusted accordingly in base pay.

Q. That is, you raised his salary?

A. Correct, to meet the increased schedule he was asked to work. Then, after Pearl Harbor, there was the setting

of the 63 hour week. We established an overtime plan for foremen and other supervisors which went into
1251 effect on March 1, 1942, but was pay retroactive to January 1, 1942.

Q. Have you with you an announcement of that plan?

A. You have it, haven't you? Look in that folder.

Mr. Dahling: Will you mark this Company's Exhibit 24?

(The document referred to was marked for identification as Company's Exhibit No. 24.)

Q. (By Mr. Dahling) I show you papers marked Company's Exhibit 24, for identification, and ask you what they are?

A. Well, the last sheet is the announcement of the change in policy we had, signed by Mr. McCauley, Chairman of the Board of Directors. The first three sheets is a set of instructions sent out explaining the policy, and signed by myself.

Q. Were copies of this Exhibit 24 delivered to the foremen at Packard's?

A. Yes; in fact, the policy announcement was placed on the bulletin board.

Mr. Dahling: I will offer Exhibit 24 in evidence.

Mr. Nelson: No objection.

Mr. Karasick: No objection.

Trial Examiner Jaffee: Received.

(The document heretofore marked for identification as Company Exhibit No. 24, was received in evidence.)

Q. (By Mr. Dahling) Mr. Denison, I notice that the policy announcement, which is the last sheet of the
1252 exhibit; refers to salaried employees exempt from overtime pay. What does that mean?

A. That refers to the exemptions established by the Fair Labor Standards Act. Quite a common term; well understood.

Q. That would include your salaried foremen?

A. Yes.

Q. The salaried employees entitled to overtime pay, which is the line at the head, would cover those who are not under the Fair Labor Standards Act?

A. No, just the reverse; it would cover those that were

entitled to the overtime provision of the Fair Labor Standards Act.

Q. That is right, I misspoke myself. Now, just generally, so far as the foremen were concerned, what did this policy mean to them by way of overtime?

A. It meant the provision of the payment of overtime for all scheduled hours that a foreman was asked to work.

Q. A what rate?

A. At time and a half.

Q. Did you readjust your base pay, then, back to a forty hour week basis?

A. Those that had been adjusted to meet the schedule they were working were changed back to a forty hour basis and then the overtime provision applied, of
1253. course, on top of that forty hour basis.

Q. That is to say, if a man worked fifty hours, he would get time and a half for the extra ten hours a week he worked?

A. If those were scheduled hours, yes, for him, or his department.

Mr. Dahling: Will you mark this Company's Exhibit Number 25?

(Thereupon the document referred to was marked for identification as Company's Exhibit No. 25.)

Q. (By Mr. Dahling) Subsequent to the—

A. (Interposing) May I inject something here?

Q. Yes, go right ahead, Mr. Denison.

A. I assume the thing you want to demonstrate is the overtime provision; that is only part of it, you understand?

Q. Yes, that is right.

A. It's the major part of it.

Q. It also covered other matters, did it not?

A. It provided for extra vacation plan, payment on holidays.

Mr. Nelson: Will you permit one question at this point, Mr. Dahling?

Mr. Dahling: Surely, Mr. Nelson.

Mr. Nelson: Mr. Denison, if a foreman were required
1254 to work an additional period over the ten hours, he did not receive any additional pay, did he?

The Witness: If it were scheduled, yes.

Mr. Nelson: If it were not scheduled and he was not asked to do it?

The Witness: If a foreman was scheduled at a ten hour day and perhaps there was a bond drive and he stayed an extra hour to clean up, no. But if he were scheduled to work that time, yes.

Mr. Nelson: Who did the scheduling?

The Witness: Well, it would depend on the department.

Mr. Nelson: I see. Then your testimony, as I understand it, is for scheduled time over and above ten hours, he would receive overtime for that extra time if he were scheduled to work?

The Witness: That is right, if he were scheduled to work that time, but—

Mr. Nelson: (Interposing) Just a minute, now. Let me get your answer. Was your answer yes?

The Witness: Yes.

Mr. Nelson: All right. Now, if you have any explanations you would like to give, all right.

The Witness: The intent of overtime was not intended to be paid for intermittent hours here and there, but a consistent schedule was paid for, the plan provided
1255 for it. I think you will find that explained in the instructions.

Q. (By Mr. Dahling) When you say for the scheduled time, that would be the scheduled time for the entire division, would it not?

A. Not necessarily. It might be scheduled for even an individual because it applied to more than a foreman.

Q. If you had a schedule, say, for a division of ten hours a day and the workers worked in that division ten hours a day and the foreman worked ten hours a day, that would be what you have in mind by the term you use?

A. Correct.

Q. But if the foreman should run over a half-hour or so to clean up his desk, he would not be paid overtime for that?

A. On the other hand, in this division, take any division, one department, let us say, was behind and they had to work two or three weeks to catch up on their schedule.

and the whole department and the foreman too were scheduled to work, he would be paid under this plan.

Trial Examiner Jaffee: May I ask you whether it was possible for neither a division nor a department to have scheduled overtime but for an individual foreman, using it in its broadest sense, in that division or department to have scheduled overtime, using the word schedule as you have used it?

The Witness: It is possible but somewhat improbable
1256 for a foreman. However, I illustrated my point by saying that this applies to more than the foremen. Perhaps someone in the advertising department working as an individual, writing something, a book, or whatever it might be.

Trial Examiner Jaffee: In other words, it applies to salaried employees, foremen and otherwise.

The Witness: It applied to exempt employees, no matter what they were.

Mr. Karasick: Mr. Dahling, may I interrupt a moment to ask a question?

Mr. Dahling: Yes.

Mr. Karasick: In order to be sure that I understand your testimony, Mr. Denison, would this be correct: That if a department had a schedule of ten hours a day for its operations and on some particular day, due either to difficulties in securing materials, or for other reasons, it was necessary to work, say, eleven or twelve hours, then the foreman, using the term generically, in that department would or would not receive overtime for the extra one or two hours?

The Witness: He would not.

Mr. Karasick: He would not?

The Witness: Correct.

Mr. Karasick: Under those circumstances, would the rank and file employees below the rank of assistant
1257 foremen receive overtime?

The Witness: Oh, yes.

Mr. Karasick: They would receive the extra one or two hours?

The Witness: Let me illustrate just a little further by saying the policy was an attempt to carry on a plan that

existed before the war and defense work started, and that provided for paying foremen a salary for forty hours a week. We didn't work many more hours than forty except rarely, but the foreman might have to spend a few hours some evening here and there, intermittently, that he was not paid anything for. This plan carries over the same philosophy into the war period, only the forty hours have become fifty, fifty-five or sixty-three, but there were still intermittent hours a foreman would have to put in.

Q. (By Mr. Dahling) Historically, is it not true that these foremen, when they were paid a salary, were supposed to be paid for this overtime that might have to be put in occasionally, in the amount of that salary?

A. Yes, correct.

Q. Is it not also true that these foremen had certain other advantages which took care of part of this overtime they might have to work occasionally?

A. Yes.

1258 Q. We will go into that a little later on.

Trial Examiner Jaffee: In other words, in fixing originally the amount of a foreman's compensation, the Company's idea was that a foreman was to be paid for his job as a foreman, and part of the job as a foreman was that he would have to work overtime occasionally, and that was taken into consideration in fixing the usual salary?

The Witness: Correct.

Trial Examiner Jaffee: So in that manner, at least indirectly, he was paid for overtime?

The Witness: Yes, and that same plan carries through, except the forty hours—except with those forty hours were increased, the increased schedule paid them time and a half.

Mr. Nelson: I have still another line of inquiry that is closely related to this, if you are still patient, Mr. Dahling.

Mr. Dahling: I have no objection to it at all.

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Mr. Nelson: My inquiry is this: Mr. Denison, as a matter of fact, it is rather difficult for a foreman to get by with

a ten hour day where the men under him are working ten hours? In other words, does he not have to come in
1259 some early and stay some late, generally speaking?

The Witness: Generally speaking, no.

Mr. Nelson: Is it not particularly true in case of conversion where you are setting up a new job? Does that not require longer hours of supervision than it does of maintenance and production workers supervised by them?

The Witness: Mr. Nelson, you are talking of what amounts to a situation that existed mostly in car days where every year you have a new model. We aren't changing these models of engines every year; they stay that way pretty much, except for some engineering changes.

Mr. Nelson: But in 1942 you were setting it up, you were setting it up brand new; it was an actual act of creation as far as supervision is concerned?

The Witness: It occurred before 1942; it started in 1940.

Mr. Nelson: I mean, in the early days.

The Witness: It started in 1940.

Mr. Nelson: You still do not quite answer my question.

The Witness: I do not know what you mean by "get by".

Mr. Nelson: He will have to come in early and stay late, especially when you are setting up a job?

The Witness: In occasional instances, yes, but that is not a general thing.

1260 Mr. Nelson: That is your answer?

The Witness: Yes.

Mr. Nelson: All right.

Mr. Karasick: Mr. Denison, do I understand correctly that the reason for the change in policy with respect to overtime pay for foremen was because after the war production program took effect, foremen of all these classes were working consistently more overtime than they had prior to that time, is that right?

The Witness: Yes.

Mr. Karasick: Is that essentially the basis for it?

The Witness: Yes. Of course, prior to this change in policy, we had paid many of them the overtime in their salary as part of their salary, but that was calculated on a straight time basis.

Mr. Karasick: You could have done that by calculating their salary in this situation too, but you preferred doing it by giving them overtime rather than raising their base salary?

The Witness: We much preferred it.

Mr. Nelson: Did you make those changes by negotiation with the foremen, or any of them?

The Witness: No.

Mr. Nelson: Were they consulted about it at all?

The Witness: No.

1261 Trial Examiner Jaffee: May I suggest, gentlemen, that while Mr. Dahling has kindly consented to let you gentlemen question out of turn, so to speak, and while there is, of course, some advantage in asking an occasional question out of turn, it has, as I think I indicated to you off the record, some disadvantages and I suggest that we keep it to a minimum as far as we can.

Q. (By Mr. Dahling) Mr. Denison, in connection with this working of overtime, did you have a study made of that for the War Labor Board hearings this summer?

A. Yes.

Q. What does that generally show as to the amount of time worked by foremen over the scheduled hours of their department or the hours scheduled for them?

A. During the month of April—we picked that as a typical month—of this year, out of 872 foremen of all categories, the average overtime for the entire month was 54 minutes.

Q. Mr. Denison, I show you papers marked Exhibit Number 25 for identification and ask you what they are?

A. They are an announcement of personnel policies applicable to both exempt and non-exempt employees issued in October of this year.

Q. Was this announcement of policy delivered to the foremen and persons interested?

1262 A. Yes.

Mr. Dahling: I will offer Company's Exhibit No. 25 in evidence.

Mr. Karasick: No objection.

Mr. Nelson: We have no objection.

Trial Examiner Jaffee: And, of course, it reflects the

facts indicated on the exhibit? That is to say, the facts indicated are true?

The Witness: Oh, yes.

Trial Examiner Jaffee: It will be received in evidence.

(The document referred to was marked and received in evidence as Company's Exhibit No. 25.)

Q. (By Mr. Dahling) Was this announcement, Exhibit 25, issued as a result of Petitions that you had filed with the Stabilization Unit of the Treasury Department earlier in that year?

A. In regards to the foremen, yes. In the case of non-exempt employees, it reflects a decision given us by the War Labor Board.

Q. Did you receive from the War Labor Board all that you petitioned for?

A. Eventually, yes.

Q. When did you first start your proceedings before—I do not mean the War Labor Board—I mean the salary stabilization unit.

1263 A. No, in the case of the Salary Stabilization Unit, we did not, and I believe it is mentioned in this announcement where they restricted us. There are two items, one being the night premium and the other being double time for Sunday work which they denied entirely as requested. There were some other changes we were forced to make that were not nearly so material as those two.

Q. Forced by whom?

A. By the Salary Stabilization Unit of the Treasury Department.

Q. Mr. Denison, what advantages or privileges do the foremen have which are not shared with the workers?

Mr. Nelson: Would you mind limiting some period to that, generally, at least? Do you think that is universal or continuous?

Q. (By Mr. Dahling) Well, let us say, what privileges or advantages did they have prior to the war or, better, Mr. Denison, would you fix some time and give us the privileges and advantages and tell us whether or not they have been changed?

Mr. Nelson: It would seem that ought to be limited to

some period relating to the period of organization, Mr. Examiner.

Trial Examiner Jaffee: I think he may answer that question.

1264 A. In the announcement that was put in as Exhibit 25, there is a very definite difference shown in the absent allowances for exempt employees, which includes foremen, as against the rank and file.

Q. (By Mr. Dahling) What is that difference, Mr. Denison?

A. The non-exempt employees are allowed an absence of three days for his first six months of service with the Company and six days for his first year of service with the Company and twelve days each year thereafter; whereas, the exempt employee is allowed twelve days of absence for the first year, 24 days for service from one to five years, 36 days—annually, I should add—for service from five to ten years and 48 days for service in excess of ten years or more.

Q. What other advantages do they have?

A. Let me finish this, Mr. Dahling, please.

Q. Oh, I am sorry, Mr. Denison, I did not mean to interrupt.

A. The allowance for the exempt employee, as stated here, is not a formula; there are a certain number of days each year allowed. Our request of the Treasury Department was not quite as definite as this. We wanted a certain amount of latitude and I think I can say without fear of contradiction that the allowances we have made for justified absences previous to this policy at least equal

1265 the amount allowed in this policy for exempt employees.

Q. When you say exempt employees, whom do you mean?

A. It includes the foreman of all categories, plus other supervisors.

Q. That is, other supervisors on salary?

A. Yes, supervisors on salary.

Q. Are there any other advantages you would say that the foremen have over the workers under the policy of the Company?

A. Over and above his salary?

Q. Yes.

A. As against an hourly rated employee, why, the vacation plan has been in effect for many years. He has the extra vacation plan, as explained in this exhibit, a separation pay plan, as explained in this exhibit, and in case of the night premium, we attempted to obtain a higher rate of night premium than is paid to the hourly rated employee, as explained in this exhibit also.

Q. What is the situation if a foreman reports in late?

A. The first half hour he is allowed.

Q. What is the situation if a worker clocks in a half hour late?

A. He is docked.

Q. The foreman, I think it has been testified, does not work with his hands, does he?

1266 A. No. I might add the payment for holidays, of course, the foremen's salary covers that, his salary goes on even though there are holidays.

Q. And in the old car days, what was done in an attempt to keep the foremen working during the slack periods? Were they given first consideration?

A. Well, if you are thinking of a model change period, in general, the foremen were kept on the job or their vacations were scheduled at that particular time. If you are thinking of the depression periods, every effort was made that could be made to keep them employed.

Q. That was felt desirable because they were the men you wanted when you started up again?

A. Correct.

Q. The Petitioner has put in evidence some sheets listing subjects which were discussed in the foremen's training school. Will you tell us about that school and how it operates?

A. The school has been in existence for a number of years, eight or nine anyway, I am sure of. It is conducted on a conference basis. There are practically no lectures. There is a conference leader who throws the discussion open on the floor and attempts to lead it, or acts as a moderator, so to speak. He generally works from some sort of an outline only.

1267 Q. Do you have any master schedules in connection with this school? Who plans the subjects for you?

A. The subjects have been planned generally by the Industrial Relations Manager, in conjunction with the manager of the school. The school, at the beginning, many of the sessions of the school, or conferences, were conducted by men brought from the plant to act as conference leaders. Several of these were foremen themselves.

Q. When is this school held, is it during working hours?

A. Yes, it is during working hours.

Q. Do the foremen continue to receive their pay while they are attending the school?

A. Yes.

Q. Are the classes scheduled with respect to size?

A. They generally run around 25 to a class.

Q. Are the foremen notified as to the class they are scheduled to attend?

A. Yes.

Q. Are they supposed, if they are unable to attend that class, to make that up by attending a class covering the same subject, a class that is scheduled for a different time?

A. If they miss a session, they are asked to come in at a later session so as to keep the continuity of the conferences.

Q. Have you also had specialized leaders come in occasionally?

1268 A. Yes, at different times we have even brought in talent from outside to deal with some of the sessions, so as to get the benefit of his material and use it in the foremen's training conferences.

Q. Mr. Denison, I show you Petitioner's Exhibits 26 and 27, and ask you if these exhibits contain the subjects which were discussed during the periods set forth in the exhibits at this foremen's school?

A. Yes, I believe they are.

Q. If I tell you that these exhibits are the same as the exhibits which were presented to the War Labor Board hearings this summer, your answer would be they are the subjects?

A. Correct.

Q. Exhibit 27 indicates that on July 3rd, 1944, new courses were started. Have those courses been completed?

A. Yes.

Q. What is being done now in connection with this school?

A. Well, we are continuing on our regular conference basis a series of sessions related primarily to interpretation of the contract with Local 190.

Q. Mr. Denison, does the Packard Company have a telephone directory, an internal telephone directory?

A. Yes.

Mr. Dahling: Will you mark this Company's Exhibit
1269 Number 26?

(The document referred to was marked for identification as Company's Exhibit No. 26.)

Q. (By Mr. Dahling) I show you a pamphlet marked Company's Exhibit Number 26, for identification, and ask you what it is?

A. This is the current telephone directory of the Company here in Detroit.

Q. Is that in use in the Company at the present time?

A. Yes.

Q. I notice that there are check marks opposite some of the numbers and names in the directory. What do those check marks designate?

A. Those represent foremen whose names are on the list we submitted to the NLRB as a result of this petition, showing that they do have telephones, that their names and numbers are listed in the directory.

Q. That would not mean, would it, that all foremen would be regularly listed in this directory?

A. No.

Q. That is, those to be listed are selected, having in mind the necessity of reaching people in these various departments, is that true?

A. Correct.

Q. And it would be unnecessary, of course, to list
1270 all of them for that purpose?

A. That is right.

Trial Examiner Jaffee: I assume, speaking rather gen-

erally, that would mean that an assistant foreman would not be listed?

The Witness: I think you will find there are some, but there are probably a higher percentage of assistant foremen not in here than any other foremen. I notice, for example, Mr. Traen is in here. He has two numbers.

Mr. Nelson: Off the record.

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Mr. Karasick: No objection.

Mr. Nelson: No objection.

Trial Examiner Jaffee: Received.

(The document heretofore marked for identification as Company's Exhibit No. 26 was received in evidence.)

The Witness: I would like to point out one thing, Mr. Dahling.

Mr. Dahling: Go right ahead.

The Witness: This directory is subject to revision about now. You will notice this was issued in January, January 1, 1944, and to run a telephone directory for about a year and revise it these days is difficult. That might be
1271 the reason why there are new foremen whose names are not in here. This is being revised right now, preparatory to issuing a new directory.

Mr. Dahling: Will you mark this Company's Exhibit Number 27?

(Thereupon the document referred to was marked for identification as Company's Exhibit No. 27.)

Q. (By Mr. Dahling) Mr. Denison, I show you two sheets marked Company's Exhibit 27, for identification, and ask you what they are?

A. This is an analysis of the classification, date of hire and the date promoted to supervisor, the signatures of the men that signed a petition for a charter for the Foreman's Association of America for the Packard Local.

Q. This schedule is a classification report on the men who signed that charter application?

A. Yes.

Q. You are referring, are you not, to Petitioner's Ex-

hibit Number 10 when you speak of application for charter?

A. Yes.

Mr. Dahling: I offer Company's Exhibit Number 27 in evidence.

Mr. Nelson: No objection.

Trial Examiner Jaffee: Company's Exhibit Number 27, consisting of two pages, is received.

1272 (The document heretofore marked for identification as Company's Exhibit No. 27 was received in evidence.)

Q. (By Mr. Dahling) The first column on Exhibit 27 is headed, "Roll Number." What does that mean?

A. That's the symbol, the payroll number of the man whose name appears alongside the number.

Q. The next column, "Present Classification," that means the classification as of today?

A. When you say the next column, you mean the third column?

Q. Yes, I am sorry.

A. Yes, the classification as of the present time.

Q. And that would be as of the date of the preparation of this exhibit?

A. Yes, that was last week.

Q. The fourth column is the date when the person whose name appears opposite this column was first hired by Packard?

A. Yes.

Q. The last column is the date on which the person named was promoted to a supervisor?

A. Yes.

Q. Now, when I say supervisor, would that include assistant foremen, foremen and general foremen?

A. Yes.

1273 Trial Examiner Jaffee: Just to clinch that last point, let us take the first name on the list as an example. I note that Mr. Peter's present classification is that of foreman. It also is indicated on the exhibit that he was promoted to a supervisor on March 15, 1936. I would assume from that that unless he went directly to the job of foreman and skipped the classification of assistant fore-

man, that he must have been promoted to the job of assistant foreman—strike that. I gather from that, that unless he was made a foreman directly from the ranks, that the date, March 15, 1936, was prior to the date he became a foreman, according to his present classification?

The Witness: If I follow you, if he was an assistant foreman before he became a foreman, the date shown in the last column is the date he became an assistant foreman.

Trial Examiner Jaffee: All right.

The Witness: I don't know that that is true in his case, but, as an example, I think that is an illustration of what you wanted.

Trial Examiner Jaffee: Yes.

Q. (By Mr. Dahling) That is the last column which is headed, "Date promoted to supervisor", that would be the date when Harry B. Peter, who is the first man named on the exhibit was first promoted out of the workers' class or the rank and file to a job in supervision?

1274 A. Yes.

Trial Examiner Jaffee: One further point, please. I notice on the same page, the second last name from the bottom, with respect to a man named Matthews, his present classification is indicated as "Time study observer." That, I assume, is not a supervisory classification?

The Witness: That is correct; that is his present classification.

Trial Examiner Jaffee: Yes?

The Witness: In putting that in there, we are not disputing, necessarily, when he signed the charter that he was not a supervisor at that time.

Trial Examiner Jaffee: On the second sheet of the exhibit I notice the name of Ghuhran. He is listed, according to his present classification, as a job setter. The same applies to Mr. Norman and Mr. Lentz. I notice he is listed as "tur. lath." which, I assume, means, turret lathe operator?

The Witness: Yes.

Trial Examiner Jaffee: None of those are presently supervisory jobs?

The Witness: No.

Mr. Dahling: Mr. Examiner, the Company is not taking the position, however, on putting this exhibit in evidence, to make it clear, that they were not supervisors at
1275 the time they signed the petition.

Trial Examiner Jaffee: Yes, I understand.

Mr. Nelson: We will not take time on the subject ourselves.

Trial Examiner Jaffee: No, I understand. I merely wanted to clear up the meaning of the exhibit; that is all.

Mr. Nelson: For the purpose of the record, it is conceded that at the time the application for the charter was made they probably were all supervisory in rank?

Mr. Dahling: The answer is, we do not know. We are not contesting that fact, however.

Mr. Nelson: All right, if you are not, we are not either.

Mr. Karasick: Mr. Examiner, I wonder if I may inquire what the purpose of this exhibit is. I confess I am somewhat at a loss to see what the purpose is myself. I would like an explanation from counsel so the record may be clear.

Mr. Dahling: The purpose of the exhibit is to show the history of the men who signed this particular petition, to show the date when they were promoted to supervisory positions. I think you will note that the vast majority of them became supervisors during the war period and within two or three years, and must necessarily, of course, have been out of the rank and file. And for what
1276 other legitimate inferences can be drawn from the exhibit also.

Trial Examiner Jaffee: The document has been received in evidence.

Q. (By Mr. Dahling) Mr. Denison, did you at one time have at Packard an Independent Union of your technical men?

A. Yes.

Q. What was the name of it?

A. It was known as the Society of Designing Engineers, or the "S. D. E.," as it is commonly known.

Mr. Nelson: I do not see the relevancy of this, Mr. Examiner, I object to it.

Trial Examiner Jaffee: It is probably a little bit too

quick to object. You cannot get everything in one question.

Mr. Dahling: No, I would like to ask another question.

Trial Examiner Jaffee: Very well.

Q. (By Mr. Dahling) What became of that Independent Union?

Mr. Nelson: I object to that as being incompetent and immaterial. Technicians are not supervision, ordinarily, Mr. Examiner.

Trial Examiner Jaffee: He may answer.

A. The S. D. E., after a series of changes, eventually was absorbed by the hourly rated Local Number 190
1277 of the UAW-CIO in a contract written with them earlier this year.

Mr. Nelson: I move it be stricken as irrelevant now.

Trial Examiner Jaffee: It may stay.

I assume that Mr. Dahling's question, which began with the phrase, I believe, "Did you have" should really have started with "Was there", and I assume the witness answered on that basis.

The Witness: Yes.

Mr. Dahling: That is a good correction, Mr. Examiner.

Mr. Nelson: My objection was not founded on the idea that it was a Company organization, or anything of that kind.

Trial Examiner Jaffee: No, I understand.

Mr. Dahling: Will you mark this Company's Exhibit Number 28?

(Thereupon the document referred to was marked for identification as Company's Exhibit No. 28.)

Q. (By Mr. Dahling) Mr. Denison, I show you a paper marked Company's Exhibit Number 28, for identification, and ask you what it is?

A. That's a copy of a petition that was being circulated on the basis of the information that came to me by the CIO stewards in our plant among the foremen, presumably in an effort to sign them up under the CIO.

Mr. Nelson: I will object to this.

1278 Mr. Dahling: Let us fix the date first.

Mr. Nelson: It has the date on it.

The Witness: This was being circulated just prior to the foremen's strike in May of this year.

Mr. Nelson: I move the statement be stricken and I object to the exhibit being received in evidence. There is no showing this has any connection whatever with the Foreman's Association or with any member of it.

Trial Examiner Jaffee: Do you have any comment on that, Mr. Dahling?

Mr. Dahling: Why, yes, I think it should be received in evidence. The Foreman's Association of America states that it is an independent Association and apparently intends to remain so. I think it is perfectly proper for the Company to argue that it may be independent now but it cannot remain so, and that is evidence from which an argument could be made or from which such an inference could be drawn. It is one of the issues of the case.

Trial Examiner Jaffee: I call your attention to the fact, gentlemen, that the witness in his answers, has used substantially these phrases, "on the basis of information I have received," also, "presumably in an effort". I think that language in and of itself indicates the inadmissibility of the answer and on that sole basis I sustain the objection and strike the answer.

1279 Q. (By Mr. Dahling) Mr. Denison, did you receive this paper, which is marked Company's Exhibit Number 28, from some other person?

A. Yes.

Q. When did you receive it from that other person?

A. Oh, a week or two before the foremen's strike.

Q. In your position as a personnel officer, do reports come to you from the plant itself and the people in the plant?

A. Yes.

Q. They come to you in the usual course of business, do they?

A. Yes.

Q. Do you believe that the source of this report you received was reliable?

A. Yes.

Mr. Nelson: I object to that.

Trial Examiner Jaffee: The answer may remain.

Mr. Dahling: I will offer again Company's Exhibit Number 28 in evidence.

Mr. Nelson: I object to it.

Mr. Dahling: I offer it as being a report that came to Mr. Denison in his capacity as the personnel officer and as an official of the Company and I will ask another question on it.

1280 Q. (By Mr. Dahling) Did it come to you through numerous channels?

A. Yes, sir.

Mr. Nelson: I will object to that.

Mr. Dahling: Mr. Denison being an officer of the Company and this coming to him in the ordinary course of business is the only way in which an officer could receive such reports.

Mr. Nelson: I still object to it. I would like to see the original document, frankly.

Trial Examiner Jaffee: If I understand the pending question, he asks merely whether or not Mr. Denison received this so-called report in the capacity indicated in the question.

Mr. Dahling: That is right.

Trial Examiner Jaffee: The witness may answer that question.

Mr. Nelson: He did answer that question and then Mr. Dahling offered the exhibit and I objected to the receipt of it in evidence. My objection followed his re-offer in evidence.

Trial Examiner Jaffee: I am sorry, I must have been rather slow in picking it up. I think Mr. Dahling, on the same basis I previously indicated, my ruling so I applies.

However, let me ask you this first: I gather, al-

1281 though I may be wrong about this, that you are offering it merely to show that the witness as personnel officer received the document, but in addition, to show the truth of the contents thereof?

Mr. Dahling: No, for the sole purpose of showing that this is a document that was circulated in the Packard factory. I do not know the truth of it. I am not saying

Mr. Addes made the statement attributed to him in the document; just to show it was distributed, is all.

Trial Examiner Jaffee: Just to clear one minor point, the Company exhibit, as marked, does not bear any signature, although I do note Mr. Addes' name is mentioned in the second paragraph.

Of course, the mere fact that Mr. Denison received the document does not show it was circulated.

Mr. Dahling: No, but this is a report that came to him, that this document had been and was being distributed in the plant.

Trial Examiner Jaffee: In view of the extent to which you asked that credit be given to the document; that is to say, since you ask more than the mere fact that it was received by the witness as personnel officer be found by this evidence, I think the objection is still good. However, as I probably indicated once or twice in this hearing before, perhaps without saying so specifically, you

1282 gentlemen, I am sure, understand I regard these hearings as an effort to get at the facts.

I may be wrong, but I would assume, Mr. Nelson, your principal objection is not to the basic competency of the evidence at all. That is to say, Mr. Denison did receive this document, and, assuming it was circulated, you still clearly think it is inadmissible?

Mr. Nelson: I do. You just cannot introduce a document and allow inferences to be drawn without any truth or proof in the document. And, of course, there is a lot more fact in this that is not included in Mr. Dahling's question. The inference sought is that somebody, or some foreman, caused it to be circulated. An equal inference would be that the Company set it afoot.

Mr. Dahling: Did the Company set it afoot, Mr. Denison?

The Witness: No.

Mr. Nelson: I will object to that. How would he know? There is no proof of any verity or credence to be given to this document; there is no proof it came from anybody connected with the Foreman's Association of America, and there is no proof that it was circulated by foremen in the Packard Motor Car Company, and all those inferences are sought to be drawn from this document.

Trial Examiner Jaffee: My last remark was delivered in the hope that possibly you gentlemen might
1283 stipulate to something, or that Mr. Nelson might concede something, if there was something to concede. I think, on the present stage of the record, I will have to sustain the objection, which I proceed to do.

Mr. Dahling: I then offer the exhibit in evidence, Mr. Examiner, as being a document which was received by Mr. Denison as an officer of the Company in the ordinary course of business and received by him as the officer of the Company to which documents of that character would be directed because of his position.

Mr. Nelson: I object to this even to that extent. As I understand Mr. Dahling's offer, it is now limited as an offer of a piece of paper that came to Mr. Denison, and nothing more?

Mr. Dahling: That came to Mr. Denison as an executive of the Company, who would, in the ordinary course of business, receive documents of this character if they were being circulated in the plant.

Mr. Nelson: Then you include the fact that it was circulated in the plant. I object to it That is a substantive fact of considerable import and there is no proof of that.

Trial Examiner Jaffee: In view of the fact that you have included the word "circulated" in your state-
1284 ment, I will still have to sustain the objection.

Mr. Dahling: Then I will remove the word "circulated."

Mr. Nelson: You mean, you are offering it just as a paper received by Mr. Denison?

Mr. Dahling: Yes.

Trial Examiner Jaffee: On that point, I think a little more foundation should be laid, because all we have at present is the witness' general conclusion and observation with reference to the paper.

Q. (By Mr. Dahling) Mr. Denison, at the time this document, which has been marked Company's Exhibit 28, was received by you, in what capacity were you employed by the Packard Motor Company?

A. I was Industrial Relations Manager and Assistant Secretary and Assistant Treasurer.

Q. As Industrial Relations Manager, did you get reports as a matter of routine as to the situation with respect to labor matters throughout the plant?

A. Yes.

Q. And if they were regarding disturbances of any character, would that notice come to you?

A. Yes.

Q. If people were distributing among the employees and the workers any documents or pamphlets contrary to the rules of the Company, would that notice come to you?

1285 A. Yes.

Q. You would get that from various sources, would you?

A. Yes.

Q. Did this document, Company's Exhibit 28, reach you in that manner?

A. Yes.

Q. And because of your official position at that time?

A. Yes.

Mr. Dahling: I renew my offer.

Mr. Nelson: I object to it, because the offer includes a lot of factual material.

Trial Examiner Jaffee: When you say, Mr. Denison, or, rather, when you adopt Mr. Dahling's question which included the phrase "in that manner," did you mean by that to indicate any more than the fact that you received this document as Industrial Relations Mannager?

Mr. Dahling: Maybe I can clear that up. I only intended to leave the inference from the question that this document was received by him as Industrial Relations Manager at that time in the regular course of business, the same as he might receive any other instrument which might be distributed, or an attempt might be made to distribute it among the workers in the plant.

Trial Examiner Jaffee: Let me put it this way: You would expect to receive, as I understand it, any

1286 document or information or knowledge of occurrences taking place in the plant which bore upon the work of your department?

The Witness: Yes.

Trial Examiner Jaffee: And such information might have to do with the circulation of a document or it might have to do with other aspects of personnel and labor relations which would not involve circulation of documents?

The Witness: Surely.

Mr. Nelson: Now, so presented, this document is without authenticity or relevancy or materiality.

Trial Examiner Jaffee: Specifically, how did you get Company's Exhbit 28?

The Witness: It came to me from several sources. In fact, one or two of the sources were foremen themselves. They came to me from foremen, through other foremen that reported to me.

Trial Examiner Jaffee: I notice that the exhibit bears no signatures, although the first line in the body of it begins, "We, the undersigned, foremen, general foremen and supervisors," and so forth. Did the particular document you received bear signatures or did you receive it in its present form as an exhibit?

The Witness: The one that I received, I don't believe have signatures on it, but I did see one with signatures on it. I haven't got it, however.

1287 Trial Examiner Jaffee: All right. The document is received in evidence for the limited and sole purpose of showing that it is the document which the witness received in his capacity as Industrial Relations Manager and for no other purpose.

(The document heretofore marked for identification as Company's Exhibit No. 28, was received in evidence.)

Trial Examiner Jaffee: I might point out in that connection an analogy with what has previously occurred in this hearing. Counsel for the Company several times objected to the Examiner's limitation as to certain testimony bearing on claimed reasons by the Foreman's Association for certain strikes, counsel for the Company indicating that there was a danger that the reviewing bodies might go beyond the limitations indicated by the Examiner. Now, here we have the situation reversed. I have no . received into evidence a document with a limitation which I would expect the reviewing bodies to

observe. If there is a danger in the one case, then I suppose there is a danger in the other. If it is fair to impose the danger in one case, I suppose it is fair to impose it in the other. In both cases, the evidence has been received with the respective limitations.

I note counsel for the Board has arisen and I gather he is about to speak.

Mr. Karasick: Yes, I would like to say something
1288 about your receipt in evidence of this document,

Mr. Examiner. I have no quarrel with what you say in regard to the document, but I would like to call your attention to the fact that it is received in evidence for the limited purpose offered, that being done notwithstanding the fact that I do believe a proper foundation has been laid for the receipt of such a document. I point to the fact that although Mr. Denison did testify as a result of your examination that he had received this document from several foremen, none of those foremen were named. There is no person named. There is no person named as having submitted the exhibit. The document is subject, it seems to me, to the same curse of anonymity that Mr. Nelson pointed out in his original speech. I have no feeling one way or another about the receipt of the document, but I think any document, to do any good in this record, should have a firm foundation laid for its receipt.

Trial Examiner Jaffee: The foundation necessary, of course, must be considered within the scope of its limits. I think a sufficient foundation has been laid for the document within the limitation indicated. Of course, the fact that I have received it does not mean you gentlemen cannot cross-examine on it. But I think, beyond what I have said, the matter to which you have referred would go more

to the weight than the competency within the
1289 limited purpose in the ruling.

Mr. Karasick: Of course, I do not agree with you, Mr. Examiner, but neither do you agree with me.

Trial Examiner Jaffee: That, unfortunately, Mr. Karasick, is the position a presiding officer gets into.

We will take a five-minute recess.

(A short recess was taken.)

Trial Examiner Jaffee: On the record. It has been indicated during the recess informally by counsel that since it is now four-thirty, and for other apparently good and sufficient reasons, we might as well recess at this time until the usual time tomorrow morning. The Trial Examiner has yielded to the blandishments of counsel, and we will, therefore, recess at this time until nine-thirty tomorrow morning.

(Whereupon, at 4:30 P. M., the hearing in the above entitled matter was adjourned to Friday, December 29, 1944, at 9:30 o'clock A. M.)

1290

Room 737, Federal Building,
Detroit, Michigan,
Friday, December 29, 1944.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 A. M.

Before:

Samuel H. Jaffee, Trial Examiner.

1292

PROCEEDINGS.

Trial Examiner Jaffee: Are you ready to proceed, gentlemen?

Mr. Dahling: Mr. Examiner, I have a question that I would like to ask Mr. Denison, a correction in his testimony.

Trial Examiner Jaffee: Yes.

ALSON G. DENISON

resumed the stand, was examined and testified further as follows:

Direct Examination (Continued).

Q. (By Mr. Dahling) Mr. Denison, you were asked yesterday whether or not you made a study of the amount of time worked by foremen over scheduled hours in their department and you answered that you did make such a study in April, 1944, picking 872 salaried foremen for the

study and that the average overtime for the entire month averaged among these 872 foremen, in the amount of 54 minutes. Have you checked that matter since you gave this testimony yesterday?

A. Yes.

Q. What is the correct figure?

A. The correct figure is 94 minutes.

Q. What was the cause of the difference between the 54 and 94 minutes?

1293 A. I would like to explain that. When a foreman works in excess of his schedule, we have no particular interest in the time that he clocks out. He may be around there because he is working up, perhaps, the bowling scores of his league or chatting with another foreman or any one of a thousand personal reasons and stays a half hour or an hour or so and clocks out late. We have no rule that he has got to get out of the plant at the end of the shift hours. So, we took the clocking out time, regardless of the reason. We do not know the reason for the man staying over. We cannot definitely say that the overtime we show recorded here was overtime work. Some of it undoubtedly was. I would be willing to say that a good portion of it undoubtedly was, but I am also quite convinced that at least a portion of it was not. All time in excess of 15 minutes we pay overtime in units of 15 minutes—recorded on the clock by foremen averaged for the month of April, 94 minutes per foreman.

Q. And that study covered 872 salaried foremen?

A. That is about an hour and a half for a whole month's average per foreman.

Q. And some of the foremen, I presume, might have worked more than that?

A. Yes, that is an average, correct.

Mr. Dahlinger—That is all.

Cross-Examination.

1294 Q. (By Mr. Nelson) Mr. Denison, do you have any notation of the number of foremen who were given retroactive pay about March 1, 1942 back to January 1, 1942?

A. I haven't it here, no.

Q. As a matter of fact, wasn't it just a few select foremen and the rest of them did not get it?

A. Oh, no, there were pages and pages of them, Mr. Nelson. I remember that very well.

Q. Why didn't they all get it?

A. As far as I know, all that worked did get it, if they worked a schedule.

Q. Your statement is that if they worked a scheduled period of work they got their back pay?

A. In the months of January and February of 1942. I presume that is what you are referring to?

Q. That is right.

A. Then that is correct.

Q. Now, this application to the Salary Stabilization Unit was made after the foremen organized and after the foremen had made demands on the Packard, wasn't it?

A. Well, the date of the organization, of course, has been established here. I do not know that we even knew when they were organized in and of ourselves before. It was after the date established in this hearing, yes.

Q. The application was made by the Company without consultation with the Association or any of its members, wasn't it?

1295

A. Correct.

Q. And there was nothing cooperative about the application so far as the foremen were concerned?

A. Well, Mr. Nelson, we did not recognize the Foreman's Association of America anyway.

Q. And you did not take the foremen into your confidence or consult with them about the application to the Stabilization Unit, did you?

A. Let me elaborate on that a bit. Any policy change such as the one you are referring to, is developed through consultations with plant managers and others, who in turn reflect the attitude and interests of their foremen and in probably many cases even consult with them. I don't know. If you were asking me if the committee that sat down to do this job included a member of the Foreman's Association of America, the answer is no.

Q. And you don't know of any consultation with foremen, do you?

A. By plant managers and others?

Q. By anybody in connection with this application?

A. No, no specific one, I know how they operate.

Q. Your statement is that on general principles, they do talk things over but you do not know if any
1296 conversations were had with any foremen on the application, for instance, affecting them?

A. That is right. I might add to that it affected a lot of other employees also.

Q. Is it a fact that in the period you have been discussing here, which roughly is the period of organization of the Association, that the salaried help beginning with superintendents and above that, received a bonus each year?

A. No, that is not correct.

Q. What exceptions are there to it?

A. We have what is known as an executive roll and that is known as a roll to which bonuses may be applied if there are any. That does not include all the categories that you have mentioned.

Q. Well, the bonus system does not apply to foremen, general foremen, assistant foremen and special assignment men, does it?

A. That is correct.

Q. Is it also a fact that the hourly rated assistant foremen receive from five to fifteen cents an hour more than the rank and file that they supervise?

A. The hourly rated assistant foremen?

Q. That is right.

A. I believe that statement is substantially correct but the great bulk of them receive at least ten cents
1297 an hour more, you said five cents to fifteen cents.

Q. That is right and you are placing the bulk of them at around ten cents?

A. I don't know that I can even agree with that, that there are any at five cents. I am not sure.

Q. But it does mathematically fall between five and fifteen cents, fifteen cents high and five cents low?

A. Five cents, I believe, would be a rare exception.

Q. And wouldn't fifteen cents be a rare exception too?

A. I don't think so.

Q. I want to examine and come to Exhibit 28, Mr. Denison. I will ask you—

Trial Examiner Jaffee: (Interposing) Company's Exhibit?

Mr. Nelson: Company's Exhibit 28. By the way, do you have your original exhibit here, Mr. Dahling?

Mr. Dahling: I believe it is in the pile there (indicating).

Mr. Nelson: Is it conceded that the paper you offer is a copy you made?

Mr. Dahling: That is a copy.

Mr. Nelson: And it is not the one he received?

Mr. Dahling: It is a copy, yes.

Mr. Nelson: What I want is the actual paper you received.

1298 The Witness: What is Exhibit 28, Mr. Nelson?

Mr. Nelson: It is that letter dated April 25, 1944 and it is to the Executive Board of the International Union, United Auto Workers of America. I would like the exact paper that you received.

The Witness: Here in the courtroom?

Mr. Nelson: Yes, I would like it now.

The Witness: You mean the one I received here in the courtroom?

Mr. Nelson: No, the one you received in the factory when this first came to your attention.

The Witness: I haven't got it here now.

Mr. Nelson: Where is it?

The Witness: I presume it is in my file in the office.

Mr. Nelson: I will be glad to excuse the witness then and let him get it.

Mr. Dahling: I have the mimeographed copy from which these copies were made and I think that is in my file here somewhere.

Mr. Nelson: I will wait until you find it, Mr. Dahling, because I want the paper.

The Witness: I don't know. Might the original have been presented to the War Labor Board hearing, Mr. Dahling?

Mr. Nelson: I am perfectly willing for you to sit

down, Mr. Denison, and assist in any way you can in
1299 locating the paper.

Trial Examiner Jaffee: Let the record indicate that the witness leaves the witness stand. Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Mr. Dahling: May the record show that I have handed to Mr. Nelson what I understand is the original of Company Exhibit 28.

Trial Examiner Jaffee: Very well. And let the record also show that the witness has resumed the witness stand.

Mr. Nelson: Now, I am going to ask that this paper be marked Company's Exhibit 28-A.

Mr. Dahling: I have no objection to that.

Trial Examiner Jaffee: There being no objection, it might be so marked.

Mr. Nelson: Is that a suitable marking, Mr. Examiner?

Trial Examiner Jaffee: Well, in the absence of any objection on the part of the Company, it is all right. Mr. Dahling has given his permission. I assume you offer it in evidence, do you?

Mr. Nelson: I do, under same limitations as the original Company Exhibit 28 was offered. In other words, I offer this actually as a substitute for Company's Exhibit 28.

Trial Examiner Jaffee: It is received as a separate
1300 exhibit, Company's Exhibit 28-A.

(The document above referred to was marked and received in evidence as Company's Exhibit No. 28-A.)

Mr. Nelson: I wish it understood that I offer this document in evidence without waiving any objections I made to Company's original Exhibit 28.

Mr. Karasick: Do I understand that Mr. Dahling said this is the original of Company's Exhibit 28?

Mr. Nelson: The original of the one he received.

Q. (By Mr. Nelson) Mr. Denison, Company's Exhibit 28-A is the actual paper that you received in the factory at the time this matter came up?

A. Correct.

Q. The one you had yesterday was a copy made for convenience here in this case?

A. Yes.

Q. What is the N. A. W. A., if you will note the last paragraph there?

A. I don't know.

Q. Do you know of any such organization?

A. Not by those initials, no.

Q. Do you know of any such organization by any initials?

A. No.

Q. Will you take a look at this paper and tell me whether it is a paper of the stock, of the kind that

1301 the Company had at that time?

Trial Examiner Jaffee: Are you showing the witness Company's Exhibit 28 A?

Mr. Nelson: I am, and he is examining it in the light.

The Witness: I couldn't say.

Q. (By Mr. Nelson) You could not say?

A. No, it's a Hammermill Bond of some type.

Q. Can you make out the type of Hammermill Bond?

A. I can't make out the word ahead of the word "Bond".

Q. Did the Packard Motor Car Company at or about the time in question have Hammermill Bond stock in and about its premises for use in its affairs?

A. I don't know.

Q. Will you observe the typewriting and state whether your had typewriters of approximately that type?

A. Oh, yes. This is a mimeograph, I am quite sure.

Q. Oh, you think it is?

A. Well, don't you?

Q. I do not know.

A. I am quite positive this is a mimeograph job.

Q. And not typing?

A. Yes.

Q. Of course, the mimeograph would disclose the general confirmation of the type, would it not?

1302 A. Yes.

Mr. Nelson: Perhaps the Examiner would like to see it?

Trial Examiner Jaffee: Yes.

Q. (By Mr. Nelson) How many more of these do you have, Company's Exhibit 28?

A. This is the only one that I have.

Q. Are there any more in the possession of the Company, as far as you know?

A. I believe there are, but I am not sure, because a number of others had them and told me they had them but I am sure they destroyed them because they were not as much interested in them as I was.

Q. So, at the present time, it would be your idea that this is the only copy of Company's Exhibit 28 in the Company's possession?

A. That is probably true.

Q. Now, I want to ask you who brought that to you, I want his name?

A. You want the name of the employee?

Q. Yes, sir.

A. That was brought to me by one of our foremen training supervisors by the name of N. C. Rogers.

Q. N. C. Rogers?

A. No, no, I beg your pardon. It was brought to me
1303 by Al Sours.

Q. How do you spell Mr. Sours' name?

A. S-o-u-r-s.

Q. What is his position?

A. He is one of our foreman training supervisors, at that time on the night shift.

Q. Just answer this question yes or no, if you please: Did he make a statement to you as to where he got this paper, Company's Exhibit 28?

A. Yes.

Q. What did you do with the paper when you got it?

A. I kept it.

Q. Did you do anything further with it?

A. With the paper?

Q. Yes, Company Exhibit 28 A?

A. Not that I recall now.

Q. Nothing that you recall now?

A. No.

Q. Just answer this question yes or no, if you please,

Mr. Denison: Did you call that paper to the attention of any of your superiors?

A. I am not positive. I am almost certain that I did.

Q. Well, give us your best recollection of the name of the persons to whose attention you called it?

A. I know I discussed it with others in the organi-
1304 zation that might be considered on an equal basis as myself.

Q. Well, I asked you for a name.

A. Mr. Weiss and Mr. Floyd Bird.

Q. Anybody else?

A. Not that I recall. I believe I discussed it with Mr. Christopher, but I am not positive.

Q. Did you give it to Mr. Christopher?

A. I am not sure, Mr. Nelson.

Q. Were you present in his office when that paper, Exhibit 28-A, was discussed with representatives of Chapter 5 of the Foreman's Association?

A. No.

Q. Were you present at any discussion of Company's Exhibit 28 with representatives of the Foreman's Association, Chapter 5?

A. No.

Q. The first time you discussed it was here in Court as a witness?

A. With whom?

Q. With anybody aside from the men, Weiss and Bird, as you have named them?

A. You asked me to name them.

Q. Yes, and you did.

A. I remember the discussions with Weiss and Bird.
I am just as sure I discussed it with a number of
1305 other people as we went through the course of our business at that time. You want to remember a foreman's strike occurred just after the issuance of this paper, Mr. Nelson.

Q. And you knew it was going to occur at the time?

A. No, I didn't.

Q. Well, you knew there was ferment there in the plant at the time?

A. No.

Q. You did not know that?

A. No. I know this, if I recall correctly, the foremen of the Briggs Company were on strike at the time.

Q. At the time this paper came to your hands?

A. I believe so. You will notice the date on the paper is April 25.

Q. That is right.

A. The strike occurred at Packard, I think, around the 3rd or 4th of May, and if I recall correctly, the Briggs strike occurred about a week before.

Q. About a week before April 25?

A. No, about a week before the Packard strike.

Q. So the Briggs' men had just gone out when this came to your hands, probably?

A. I believe so.

Q. Now, answer this question yes or no, if you please, Mr. Denison: Do you know who composed this letter?

1306 A. No.

Q. So far as you are concerned, the letter is anonymous?

A. Yes, I think my previous answer covers that.

Q. And you received it from Mr. Sours?

A. I received this copy from Mr. Sours, yes.

Q. Did you receive other copies?

A. I am quite sure I saw other copies in the hands of other executives.

Q. You stated yesterday that you were pretty sure that you saw signatures or a signature of a paper like Company's Exhibit 28-A.

A. There is a signature on here (indicating).

Q. A signature?

A. I assume it is a signature, I don't know that.

Q. Where is there a signature on that?

A. In the upper righthand corner.

Q. You mean that pencil notation?

A. It is a name a department symbol that I recognize.

Q. Whose handwriting is that in, Timberman?

A. I don't know.

Q. Is it yours?

A. No.

Q. Is it Sours'?

A. I don't know.

Q. Do you know the handwriting at all?

1307 A. I know Mr. Sours' handwriting; I'm quite sure it isn't his.

Q. Do you know the handwriting in which the word "Timberman" appears there?

A. No, the symbol "D. S. B." follows.

Q. Yes, that is one of your departments, is it not?

A. Yes.

Q. What department is it? I really just want the information; I am not trying to test your recollection.

A. A D division material handling department.

Q. Now, did you have a man by the name of Timberman in that department at that time?

A. I understand he was a CIO steward.

Q. He was not a supervisor at all?

A. Oh, no.

Q. Can you give me the name of any person who you would claim signed some one of these Company's exhibits 28-A?

A. I couldn't tell you. At the time I was told of some, but I didn't make any mental note of it.

Q. I am not asking you what you were told. If you will observe, Mr. Denison, I have carefully avoided asking you what you were told. I have stuck to what you saw and what you know yourself, and I am doing so in this question: Can you give us any name that you ever saw signed on Company's Exhibit 28-A?

1308 A. No.

Trial Examiner Jaffee: Or on any copy thereof?

Mr. Nelson: I am referring not only to this paper but any similar paper or copy.

The Witness: No.

Q. (By Mr. Nelson) So the answer is that as far as the paper itself is concerned, you could not, of your own knowledge, say that you ever saw a signature on it, could you, and give us the name of the person?

A. Not positively, no. I have seen other copies and my recollection is that there were some signatures on them but it is very difficult to remember. You will remember that was back in April, Mr. Nelson. I wasn't particularly

interested in any names on there; I was interested in the general proposition.

1309 Q. (By Mr. Nelson): Well, you were interested in whether the CIO was organizing the foremen or not, weren't you?

A. Correct.

Q. Was the name Timberman, D. S. B., on that Exhibit 28-A, at the time it came to you?

A. Yes.

Q. And you have not changed it in any way?

A. No, I haven't touched it.

Q. Did you call Mr. Timberman in?

A. No.

Q. Did you have him called in anywhere down the line?

A. No.

Q. Did you have any conversation with Mr. Timberman?

A. No.

Q. Direct or indirect?

A. No.

Q. As I understand it then, you did not either call Mr. Timberman or cause him to be called in or say to him in effect, "Look, what are you doing with this and what do you want to do about this?" You didn't do anything of the kind, did you?

A. No.

Q. Did you call in any foreman or representative of the Foreman's Association and in effect show him C-28-A

1310 and say, "What about this, what do you want about it?"

A. No.

Q. You didn't do anything of that kind?

A. No.

Q. As far as you know, neither did any other officer of the Company?

A. I cannot say anything as to what they would do, or as to that.

Q. You don't know that they did anything of the kind?

A. No.

Q. I am not asking you to say that they did, I am asking you whether you, as a Labor Relations man, knew of any other officers or some of your superiors calling in Mr.

Timberman or a foreman or representative of the Association and saying to them in effect, "What about this, what do you want about it?"

A. No.

Q. You don't know of any such event as that at all?

A. No.

Q. And your answer is no, isn't it, Mr. Denison?

A. That is correct.

Mr. Nelson: Will you mark this as Exhibit 42?

(Thereupon, the document above referred to was marked Petitioner's Exhibit 42 for identification.)

Q. (By Mr. Nelson): Mr. Denison, I hand you Peti-
1311 tioner's Exhibit 42 for identification and ask you to compare the handwriting of Timberman, D. S. B. on Exhibit 42 with that on Exhibit C-28-A.

Trial Examiner Jaffee: Will you read the last question, please?

(Question read.)

The Witness: I am not a handwriting expert, but they look to me to be the same.

Q. (By Mr. Nelson): So, as a layman, it looks to be the same signature?

A. Yes.

Q. Would it help you any in answering these questions if I advise you that the handwriting on Petitioner's Exhibit 42 is that of Mr. Prosper Traen?

A. In what respect?

Q. In answering these questions. If I gave you that information would it help you?

Trial Examiner Jaffee: You mean in the last series of questions you asked?

Mr. Nelson: Yes. I will say to you, Mr. Denison, that that is the handwriting of Mr. Prosper Traen, President of the Packard Chapter of the Foreman's Association of America.

Mr. Donovan: On what?

1312 Mr. Nelson: On both, we claim. It certainly is on 42 because I just handed him a piece of paper and had him make it here at the table.

Mr. Dahling: What is the point?

Trial Examiner Jaffee: I am not sure what you are getting at.

Mr. Nelson: I am not trying to take a man of Mr. Denison's experience by surprise.

Q. (By Mr. Nelson): Now, if the word Timberman, D. S. B. on Exhibit 28-A is the handwriting of Mr. Prosper Traen, do you want all of your testimony to stand as to where you got that letter and what you did with it and what occurred in connection with it?

A. Absolutely.

Q. You want it to stay just as it is?

A. Yes.

Q. And you agree that the handwriting appears to be similar, just as a layman and not as an expert?

A. Yes, maybe Mr. Traen is a good forger.

Q. No, he has just written it at my request.

Trial Examiner Jaffee: Well—

Mr. Dahling (Interposing): Mr. Examiner, if Mr. Traen says that that is his signature and he wrote it on the exhibit why we have no objection to that.

1313 Mr. Nelson: It is our claim, of course, that we investigated the source of that and found it not to be Mr. Timberman who put it on the paper and later it came from Mr. Denison.

Trial Examiner Jaffee: Is Mr. Traen here now?

Mr. Nelson: He is right here.

Trial Examiner Jaffee: You are still under oath, Mr. Traen, did you just sign that slip?

Mr. Traen: I just signed it, yes.

Mr. Nelson: I will show it to him.

Trial Examiner Jaffee: Just a minute. I understand, for the protection of the witness, since all of us are sometimes inclined to overlook the fact that what we intend to say as a pleasantry sometimes may not appear that way in a cold transcript,—I am sure the witness would want me to say that when he used the word "forger" in connection with Mr. Traen, he said it accompanied by a broad smile and obviously meant it as a pleasantry. I might also say that once or twice in the record, in the past, I have made certain remarks intended in a like vein and as you read it in cold print, somebody might get the wrong impression.

Mr. Nelson: On behalf of Petitioner, we had no intention of imputing a serious intent to Mr. Denison's state-
1314 ment to Mr. Traen.

Trial Examiner Jaffee: I am sure you did not. Sometimes other people read the record a long time afterwards, and they are not here and do not see what happens.

Mr. Nelson: I offer Exhibit P-42.

Trial Examiner Jaffee: It is received.

(The document heretofore marked Petitioner's Exhibit 42 for identification was received in evidence.)

Q. (By Mr. Nelson): So far as any knowledge you have of Company's Exhibit 28-A, in itself, is anonymous and the circulation of it in the plant is anonymous.

Mr. Dahling: You mean he does not know who circulated it?

Mr. Nelson: He doesn't know who composed it or circulated it.

Trial Examiner Jaffee: May I amend that by adding that I would like to construe the evidence at the moment to mean that he doesn't know, and I emphasize "know", that it was circulated at all.

Mr. Nelson: I did not want to ask him that again but I will add the Examiner's questions. You don't know that it was circulated at all, do you?

The Witness: As to positive knowledge and seeing it done and signed, the answer is definitely no. If I
1315 might qualify that? I will want to say this, that the information came to me from a number of different sources that these things were running through the plant. I had one and that was the only one I wanted. I made no effort to get any more or to go out and snoop to see what was going on with regard to it. I felt quite sure that from the number of reports that came to me, that that was sufficient evidence that it was going on.

Mr. Nelson: And you didn't call anyone and have a talk with them or anything about it?

The Witness: No, I did not.

Mr. Nelson: That is all.

The Witness: Let me qualify that, Mr. Nelson. By "anyone or anybody" I mean anybody of the ones that

you mentioned of the Foreman's Association or the CIO stewards.

Mr. Nelson: Anybody that might be in any possibility responsible for the preparation of the paper or the circulation of it.

The Witness: My discussion of it was limited with men whom I worked with from day to day, general executives like Mr. Bird and Mr. White and others.

Mr. Nelson: And Mr. Sours?

A. Mr. Sours, yes.

Mr. Nelson: That is all.

Q. (By Trial Examiner Jaffee): Mr. Denison, you
1316 indicated that as a result of what was handed to you, and what was told to you, you became convinced—and I think I am quoting you—you became convinced what was going on—I think that is the phrase you used—do you mean by that that you became convinced of the circulation of the paper?

A. Yes. If I might elaborate on that a bit. I want to make this clear, Mr. Examiner, if Mr. Sours brings a paper like that to me and he says he has been told by the foreman that this is—

Mr. Nelson: Let me interrupt to impose an objection to the question and answer because they are all hearsay.

Trial Examiner Jaffee: Well, I think—

Mr. Nelson (Interposing): Of course, I cannot overrule the Examiner, obviously.

Trial Examiner Jaffee: You can object to an Examiner's question.

Mr. Nelson: I object to the question and answer as calling for hearsay.

Trial Examiner Jaffee: The witness started—

Mr. Nelson (Interposing): And calling for a conclusion.

Trial Examiner Jaffee: The witness started to volunteer
something beyond the answer to the question. The
1317 question is proper and the answer to the question was proper but the witness started to volunteer something beyond it—

Mr. Donovan (Interposing): All Executives get reports that are hearsay and routine and normal and necessitous

in procedure. They find out what is going on in the plant from reports of men whom they can depend upon.

Mr. Nelson: But that does not enable him to put it in evidence.

Trial Examiner Jaffee: That is the point. All of us in our everyday dealings act on hearsay. No business could operate properly without a degree of hearsay information being received. If the top executive had to rely on personal knowledge, as we use the term in lawsuits, I do not see how any business could function. However, I suppose that in turn the court has to operate to a degree on a bit more strict principle.

Mr. Karasick: If the witness wants to qualify his answer to the question he should be permitted to do so and if it is improper after he has finished his answer, a motion may be admitted to strike the answer.

Trial Examiner Jaffee: The witness' last few words given by the witness on his part, as to the volunteer addendum, indicates the impropriety on the face of
1318 it, so I will sustain the objection as to the last part.

The Witness: You mean that you want me to go on with that elaboration as I called it?

Trial Examiner Jaffee: Well, it is difficult to know whether part of it might be good and part of it might not. You started out with some parts which were clearly improper. I don't know whether it is up to me to try to separate in advance what might be good and what might not.

Mr. Dahling: Of course, Mr. Examiner, it has been our position that Mr. Denison because of his position in the Company had these reports coming to him because of his position and as a matter of routine in the ordinary course of business. And that he can testify to them as a fact. That came to his knowledge in his official capacity.

Trial Examiner Jaffee: What facts are you talking about?

Mr. Dahling: Well, the circumstances surrounding the circulation of these petitions, Exhibit 28.

Mr. Nelson: Then hearsay on the broadest possible basis would be admissible. If you are to rely on hearsay evidence of two representatives of the Company getting

together and talking, do you want the conversation in the record? That was just what Mr. Denison was offering.

1319 Mr. Dahling: Not that broad.

Mr. Nelson: That is my objection.

Mr. Dahling: It is to some extent limited, Mr. Nelson. These reports that people in industry get from others in management come to them and if they do come to them in the regular course of business and as a matter of routine, I think they are admissible as facts.

Trial Examiner Jaffee: You don't claim, Mr. Dahling, that papers like this, circulated, are circulated as a matter of routine?

Mr. Dahling: Yes, because it is part of the duty of those in the Company who have the obligation to check up on what is being distributed through the plant to report back to certain officials in the Company, and that deals with the worker or when it deals with the foreman, to report that matter to the Industrial Relations Department.

Trial Examiner Jaffee: I assume from that, Mr. Dahling, that what you mean by that is that it is the duty of the officials in the plant to report to the Industrial Relations or Labor Relations Department or Personnel Department, matters which affect their department, no matter what the particular item happens to be?

Mr. Dahling: I was specifying the distribution of
1320 pamphlets. That would be the responsibility and duties of them.

Mr. Nelson: Would you then object if I were to offer to show what Mr. Traen and Mr. Turnbull said when they met on the same proposition?

Mr. Dahling: You have a different proposition there. What offered happened with the internal workings of the Company.

Mr. Nelson: Well, one of them is president of the Chapter and the other on the National Board, and they have a duty to meet and talk with each other. Of course, you would object to that evidence because they have a duty to the Association and you make a distinction because it is not a duty to the Company.

Trial Examiner Jaffee: You made a point yesterday in

arguing for the admissibility of Company's Exhibit 28—I thought then and I think now that you were stretching it somewhat—I don't mean in any attempt to deceive the Examiner. Of course, we will disagree as to what constitutes admissible evidence. You are stretching a bit the applicable rule of evidence with reference to what you call reports received in the usual course of business. I did receive Exhibit 28 with remarks indicated in the record.

I do not think that the principle of what you term
1321 reports received in the usual course of business goes to the extent of receiving matters such as you have sought to introduce, that is to say, the entire conversation of the nature that is involved in Company's Exhibit 28. In general those so-called reports have to do with writings, received in the regular course of business by people whose business it is to receive them.

Mr. Nelson: In handwriting and signed by the person in authority and in that position, Mr. Examiner.

Trial Examiner Jaffee: I would not be quite so technical as that. At any rate, I do not think it goes to the extent that you, Mr. Dahling, have sought to apply that rule of evidence and I think an inspection of Wigmore, et al., will bear me out.

Mr. Donovan: As a matter of fact, Mr. Examiner, during the present conditions of greatly augmented production force represented by an active union, to-wit, the CIO, and no presence of other union interests in the employees, leads to reports that would otherwise be made in writing being verbally made for such good reasons as this. Written remarks about the activities, union activities of an employee, are very difficult and present a very difficult problem for the employer under the National Labor Relations Act, as meaning interference within the meaning of the act
1322 of Unfair Labor Practices. Unfair labor practices may be inferred from various like actions. Where writing may be pointed to they give ground for fear that they will cause hearings and charges of unfair labor practices. It is not at all unusual that reports received by a man like Mr. Denison in his position at the business end of the Labor Relations Department, would be partly verbally as well as in writing, and not in the old sense of a strictly

evidentiary rule, as suggested by Mr. Nelson, as such report in a formal nature on a form signed in writing by a particular man, on which management might depend for information, would have slight applicability under the present condition. I think that is a thing that might enter into the diposition of the evidentiary document. I think it should.

Trial Examiner Jaffee: I point out in addition, Mr. Donovan, there has been no showing that other—and we might probably term it—better evidence is not available. There has been an attempt made to get into evidence, at least the inference, that this document was circulated. Second, that it was circulated by foremen, using the broad sense; and, third, that it was circulated improperly, and so forth. As far as the present stage of the record goes, that, if true, could be proven by people who either did the circulating or who actually saw the circulating being

1323 done and who saw the persons engaged in the circulating. If, for no other reason, it seems to me, it is proper for me to rule, and, in fact, it is one of the bases for the ruling, I do not think we ought to get this second- or third-hand information; we ought to get it direct. In any event, I think it would be more appropriate, perhaps, if the witness answers specific questions rather than going on saying something that is not in response to any pending question.

Mr. Nelson: I want to interpose a motion now to strike from the files Company's Exhibit 28, and with it, of course, Company's Exhibit 28-A.

Trial Examiner Jaffee: The motion is denied.

Q. (By Mr. Nelson): This man, Timberman, is in this man Crawford's division, is he not?

A. No—well, in that division, but not reporting to Crawford.

Q. No, I said nothing about reporting to Crawford. Timberman is in Crawford's division?

A. So far as the area is concerned, yes.

Q. And as far as supervision is concerned?

A. No, he does not report to Crawford either directly or indirectly.

Q. He is a steward of some division of the CIO, is he not; that is your information?

1324 A. That is correct.

Q. He is not a foreman, Timberman?

A. No.

Q. And he is in Crawford's physical division, if you want to call it that way?

A. But reporting to another division head, not Mr. Crawford.

Mr. Nelson: That is all.

Q. (By Mr. Karasick): Mr. Denison, how many plants or buildings are there at the main plant of the Company?

A. How many buildings?

Q. Yes.

A. Understand, Mr. Karasick, taking this building, as an example, it is one building or it might be four wings and, therefore, it is called four buildings. In our designation of buildings, we would probably call this four buildings. I just want to make that clear. I think I have some figures on that basis of designation.

Q. You mean, if a building branches out in one or more wings, each wing might be called a building?

A. For our purpose, yes.

Q. Can you tell me how many buildings there are, I mean separate physical structures?

A. No, I can't, because we designate them on the basis I just described.

1325 Trial Examiner Jaffee: The difficulty is unless we get the exact definition of buildings, we do not know what the figures would mean.

Mr. Karasick: We will try to get it, Mr. Examiner.

The Witness: 115, that's an area of a plant about a mile long and approximately a quarter of a mile wide.

Q. (By Mr. Karasick): Are those 115 buildings enclosed, that is, with a fence, or something—

A. (Interposing): No, there are streets that run through but the plant would be on one side of the street and on the other side of the street there is no grade space between these buildings.

Q. There are over-passes and under passes between the separate physical structures?

A. There are several of those, yes.

Q. And all these buildings are in the same general area?

A. Yes, you take an area approximately one mile long and a quarter of a mile wide, all these buildings are within that area.

Q. Now, does the Bundy plant on Hearn Avenue consist of one separate physical structure or more?

A. I have never been inside the building, Mr. Karasick, but my understanding is it is one building, in this regard, I think there is an office in the front and a
1326 factory adjoining the office, which you might call two buildings.

Q. Is that true of the Hupp plant on Milwaukee Avenue?

A. In the Hupp plant, we have a part of one of the Hupp Buildings, as I understand it, I have never been in that building yet.

Q. But it does not consist of two or more buildings, your properties at the Hupp plant?

A. From what I know, it doesn't.

Q. Can you tell me what the present total number of employees are at the main plant? You say the figures you gave previously, Mr. Denison, included the Hupp and Bundy plant.

A. I said 32,583.

Q. That is right, including the Hupp and the Bundy plants.

A. I can estimate it, and that's all.

Q. Give us an estimate for the Hupp plant first?

A. The main plant only, at the time of those figures, which was November 30th, would comprise about 32,000 employees.

Q. There would then remain about 533 who would be either at the Hupp plant or the Bundy plant?

A. That's my estimate. If it is of any importance, I would be glad to get those figures for you, Mr. Karasick.

1327 Q. I wish you would get the figures of the number of employees at the Hupp plant.

A. As of November 30th?

Q. Yes, and the number of employees at the Bundy plant.

A. I will be glad to do so.

Q. You do not have those figures available with you now?

A. No.

Mr. Donovan: You mean the total number of employees of all sorts, Mr. Karasick?

Mr. Karasick: Yes.

The Witness: You understand, I believe, that these plants are just starting up, particularly the Hearn Avenue plant, and to some extent, the Hupp plant. I can get the figure as of November 30th.

Q. (By Mr. Karasick): That will be satisfactory in order that the Board may see what the present state of employment is at each of these plants.

A. Yes.

Q. While you are on this point, Mr. Denison, I take it that it is anticipated that the Hupp plant and Bundy plant will work up to a total personnel figure the Company has in mind?

A. I stated some figures earlier, I believe, during Mr. Dahling's questioning, that there were approxi-
1328 mately 1,000 at the Bundy plant and approximately 600 at the Hupp plant. That's the probable objective, as I understand it now.

Q. Both the Hupp plant and the Bundy plant are now manufacturing the same type of materials, or part of them, that you are manufacturing at the main plant today, is that correct?

A. In the Aircraft Engine Division.

Q. Yes, what is your expected rate of increase at the Hupp plant and at the Bundy plant to reach the figures that you have given?

A. You mean when will we reach them?

Q. Yes.

Trial Examiner Jaffee: You mean as to the number of employees?

Mr. Karasick: Yes.

The Witness: When we will reach the 1,000 at the Bundy plant?

Q. (By Mr. Karasick): Yes.

A. I don't know, Mr. Karasick.

Q. You have no idea?

A. I think I can get that also.

Q. All right, and the same for the Hupp plant.

A. Yes.

Q. In other words, it may help to know how many
1329 employees you have and you intend to hire, if you can, of course, per month, until the period that you reach your total employment figure at each plant, according to the best calculations you can make at present. I understand you can only approximate the figures.

A. Yes.

Q. Who is in charge of the Hupp plant?

A. Well, it's under the division head, Mr. H. A. Garvey. He will be in charge, as I understand it, of both the Hupp and the Bundy operations.

Q. He is also in charge of the main plant operations?

A. He is in charge of the "C" Division and his organization chart was submitted in evidence.

Q. Actually, no, these are separate physical properties, they will be under the same operation and control as similar departments would be in the main plant?

A. Yes.

Q. The only difference is they are physically separated?

A. The parts moving into these plants are coming from the "C" Division, of which Mr. Garvey is the head.

Q. The Labor Relations matters at each of these plants will be handled by the same individuals who handle Labor Relations matters at the main plant?

A. Yes.

1330 Q. In other words, they will not have separate controls or operations, as far as management is concerned, at each of these two plants?

A. They will be looked upon the same as any other division in the plant is now. They will be handled, so far as I know, the same way Labor Relations and everything else is.

Mr. Nelson: You mean by that, just as though they were in this general body, a quarter of a mile long and a mile wide—or however you said that?

The Witness: That is correct, as far as I know, I think practically all services, and so on, will be handled as though they were in some building right next to the main plant.

Q. (By Mr. Karasick): Did I understand you yesterday correctly to have testified that hourly-rated and salaried foremen—and I use the term generically now, are really the same that the amounts they receive are equivalent, the only difference is the difference in pay, which is a matter of past historic basis. It makes no difference as to the amount they receive?

A. I think generally that is a fair statement, yes. Of course, one is paid on an hourly rate basis and paid according to hourly rate principles; the other is paid on the salary basis and paid according to salaried

1331 principles.

Q. But they receive approximately the same amount?

A. The assistant foreman on hourly rate will earn, I am quite sure, the same as an assistant foreman on salary.

Q. And that is true of the other classifications in question in this proceeding?

A. I don't think there are any others but assistant foremen on the hourly rate. There may be a few more men, but very few, if any.

Q. Are there some women in the plant who would fall in the classifications we have been interested in in this case; in other words, are there foreladies?

A. There are a few.

Q. Do you know how many there are and in what classifications they fall?

A. I don't believe there would be over five, and I am quite sure they wouldn't be above the rating of assistant foremen.

Q. How are foremen in the four classifications classified under the Fair Labor Standards Act?

A. You are thinking of the exceptions, like executive, administration and professional?

Q. Yes.

A. As executive.

Q. As executive employees?

1332 A. Yes. To qualify that, the special assignment men, I believe, on our last report to the Wage and Hour Division, were classified as administrative. I think they might just as well have been classified as executive, too, because of the dual function they perform.

Q. When were they so first classified?

A. Are you referring to the Fair Labor Standards Act now?

Q. Yes.

A. From the time of the Fair Labor Standards Act, from the time it became effective.

Q. And that, prior to the war, meant that persons qualified as executives under the Fair Labor Standards Act, would not receive overtime pay for work over the number of hours set forth in the Act per week?

A. If I got your statement, it was to the effect they would not receive it. I don't believe that is quite a correct statement.

Q. All right, then you correct me when I am wrong.

A. There is nothing to prevent any company paying overtime to foremen, as far as the Wage and Hour Division is concerned, but you are not required to do so under the Act.

Q. That is right. We agree upon that as being correct with respect to such a group of persons.

1333 A. You asked me a question back there about the date. I think the Fair Labor Standards Act became effective in 1938.

Trial Examiner Jaffee: In fact, that is the title of it, the Fair Labor Standards Act of 1938.

Q. (By Mr. Karasick): I believe you stated yesterday that prior to the war when foremen consistently worked overtime, instead of paying them time and a half for the overtime so worked, you, instead, raised their base pay

so that it became an increase on a salary basis, is that correct?

A. You used the term "prior to the war." By that do you mean Pearl Harbor?

Q. I do not know. If there is a distinction in dates, you give it to me.

A. In my testimony I established definite dates. The one being the institution of the plan of payment of overtime effective March 1, 1942, and that plan in general was made retroactive to January and February preceding March, 1942. That brings us down to January 1, 1942. Prior to that, and beginning with the defense program, prior to Pearl Harbor, the whole thing was known as the defense program; not the war program, where there was consistent overtime scheduled, we increased the base rate of those men. It wasn't large at that time, I mean

1334 the number of those men wasn't large at that time. We weren't in high production in the Aircraft Engine Division nor in the Marine Engine Division.

Q. What I wondered was this, when you did increase the base pay of these men was it your computation—well, what was your computation based on, how did you compute the increase they were to get?

A. Prior to any changes, their base pay was on a forty-hour basis. If, let us say, the foremen of the Tool Design Department—that's the department that had a great deal to do with getting the program rolling—were working fifty, sixty or even 105 hours, their pay was adjusted accordingly.

Q. Was that computation based on the amount of time over forty hours they worked at straight rate or at one and one-half time?

A. At straight time.

Q. In respect to this ninety-four-minute average worked by foremen, I think you said in April, 1944—

A. (Interposing): You said "worked." I question that term.

Q. You term it what it should be, then.

A. The time showing on the clock card over the normal quitting time of the foremen and generally his department.

Q. Let us call it time put in. Will that be satis-
1335 factory to you?

A. "Put in" to me means work in general, time in the plant.

Q. This ninety-four-minute average you were speaking about was ninety-four minutes, as I understand, over the amount of time that they were to work in the plant. That was based on a ten-hour day, ninety-four minutes over the ten-hour day they were regularly scheduled to work?

A. You are taking that ten-hour day, assuming that is the only schedule we had. We had men from eight hours on and some on twelve hours.

Q. On April 12th, when you made that study?

A. That's true at that time. Remember, in some departments we had three eight-hour shifts. But by and large, the greatest bulk of the factory, and, therefore, the foremen, worked a ten-hour day.

Q. And the ninety-four minute average was based on a study computed from a ten-hour day?

A. Yes; of course, if a man was an eight-hour man, it was in excess of eight hours.

Q. Were there any eight-hour schedules in the plant at that time?

A. Yes.

Q. Were most of them eight or ten?

A. Most of them were ten hours; some were nine,
1336 as I recall, but the large majority were ten hours.

And, incidentally, of course, that was also five hours on Saturday, a total of fifty hours a week.

Q. I see. If you will pardon me just a moment while I look through these exhibits, I want to get ahold of Company Exhibit 25 and ask you about it.

A. What is Exhibit 25, Mr. Karasick?

Q. It is a proposed change, or proposed changes in salary and vacation, holidays and sick benefits that you spoke of yesterday.

A. Here is one (indicating).

Q. Do you have a copy of it there? Thank you. Mr. Denison, I would like to ask you a question or two about Company's Exhibit 25, because I am not sure that I understood yesterday your testimony with respect to it. My

recollection is that you testified that foremen received certain privileges that regular employees did not, as set forth in the document. You pointed out such things as vacations, absence allowances, night premiums, extra vacations, I think, and separation pay, is that correct?

A. Well, a supervisor—a foreman supervises generally a number of hourly-rated employees. I take it you mean your statement to mean the men he supervises, and he does receive these benefits, but the men he super-

1337 vises do not get them. Now, you mentioned the night premium. I qualified that by saying that we attempted to get more for the foremen than their employees get, but were unable to, and that is explained in this exhibit. We attempted to get five per cent for the foremen, but the Salary Stabilization unit limited us to five cents, which is the same thing the hourly rated employees get as night premium.

Q. As to the night premium, the regular employees—I mean by that the rank and file—and the foremen receive the same benefits, is that right?

A. Yes.

Q. All right, now, let us go to—what is it, absent allowances?

A. Yes.

Q. Do the foremen receive any greater benefits with respect to absence allowances than the rank and file employees?

A. The hourly-rated rank and file receive no absence allowances.

Q. But the foremen do?

A. As listed here and as limited here by the Salary Stabilization unit also, Mr. Karasick.

Q. All I am interested in knowing is whether or not foremen do receive benefits with respect to absence allowances that the regular hourly-rated employees do not?

1338 A. That is correct.

Q. Now, do foremen receive any greater benefits with respect to vacations?

A. Yes.

Q. As set forth in that document, is that right?

A. There is no comparison here. This indicates what a foreman does receive. If you want to know the differences, I can explain those.

Q. Would you?

A. Yes. The hourly rate employee does receive a vacation payment, but the qualified period for the vacation payment for the hourly-rated employees is much longer than indicated here for supervision. The qualified period for a two-weeks vacation for a foreman is one year; for an hourly-rated employee it is five years. A one-week vacation for a foreman, it is six months; for an hourly-rated employee, it is one year.

Q. What about separation pay, are there any greater benefits the foremen receive?

A. There are no separation pay provisions for hourly-rated employees.

Q. So that separation pay provisions apply only to regularly exempt employees, as you call them, or from assistant foremen on?

A. That is correct.

1339 Mr. Karasick: That is all, I believe.

Trial Examiner Jaffee: Any further questions of the witness?

Redirect Examination.

Q. (By Mr. Dahling): Mr. Denison, referring again to Exhibit 28-A, did you have that prepared?

A. 28-A being this letter or petition? No.

Q. Yes, being the document about which we have had considerable discussion yesterday and today.

A. No, I did not.

Q. Do you know where it was prepared?

A. No, I do not.

Q. Was it, to your knowledge, prepared by the Company?

A. No, I am quite sure it wasn't, but I don't know that positively.

Q. When you say the Salary Stabilization unit, or rather, your petition to the Salary Stabilization unit in connection with certain adjustments with reference to pay, vacation, separation pay, and so forth, include others than

foremen, will you state for the purpose of the record just what categories were included?

A. All exempt employees, Mr. Dahling, as defined by the Fair Labor Standards Act, where we apply that in our operations. That includes, in addition to foremen of all categories, superintendents, various office super-

1340 visors, various other supervisors, engineers, doctors, various technical office employees that can qualify in the professional exempt classification, certain professional assistants that can qualify under professional exemption. There are others, but I can't think of all of them at this time.

1341 Q. (By Mr. Dahling) So that would include all higher executives and administrative employees of the Company, isn't that true?

A. Yes, as we apply the exempt status, yes.

Mr. Dahling: That is all.

Mr. Nelson: I have a couple of questions.

Trial Examiner Jaffee: Suppose we take the morning recess at this time.

(Recess.)

Trial Examiner Jaffee: Are we ready to proceed, gentlemen?

Mr. Nelson: I have a couple of questions.

Recross-Examination.

Q. (By Mr. Nelson) Mr. Denison, is it a fact that if a man is demoted he does not get any separation pay, if he is demoted from supervision to an hourly rated maintenance and production worker—that he does not get any separation pay?

A. In a case where the change is effective immediately, in other words, a transfer, the answer is no, he does not, but if he is laid off, he does. Perhaps as in many cases, he may be laid off and called back again when another opening occurs; in that case he does get separation pay.

Q. That would be by reason of the layoff?

1342 A. Yes.

Q. And not growing out of the demotion?

A. As a matter of fact, Mr. Nelson, the Salary Stabilization Act prevented us in their ruling in paying it in many cases of transfer.

Q. The point about it is that if he is laid off, that is, not necessarily a demotion and he does not know about it until he comes back and there is no place in supervision that you can put him in, so you put him on an hourly rate of pay?

A. That is substantially true. A man may be laid off and given a semi-promise that we will probably have something for him in two or three weeks.

Q. And he wants to go to work before you have a supervisory position for him, so you put him back to work in whatever you have?

A. The point is—

Q. (Interposing) The point is that at the time you laid him off he does not—he isn't demoted. If he is demoted he does not get separation pay, so my statement is correct, isn't it?

A. Yes, that is correct.

Q. As the matter now stands without any representation of the foremen and no agreement, a member of the supervisory force taken into the Military Service who
1343 comes back has no representative as such, to take up his situation and re-employment—

Mr. Donovan: (Interposing) Just a minute, I will object to that question because there are a variety of agencies having to do with nothing but that particular problem and there are a large number of appropriations that have been made. The Government has acted in that matter and I do not think this witness should be asked to answer that question for the purpose of drawing an unfavorable inference against the Petitioner—against the Packard Company. I object to the question.

Mr. Nelson: I am referring to representation by supervisors as such, and not to public agencies. I will limit my question to that.

Mr. Donovan: I object to the question for another reason. It is another way of asking whether or not the Company has collectively bargained with the foremen supervisory employees. We all know they are not.

Mr. Nelson: I put in my question, no representation and no contract as such. The supervisory force returning from Military Service is not represented in any supervisory organization whatsoever.

Mr. Dahling: By whom?

Mr. Nelson: Supervisors or Association.

The Witness: You know, Mr. Nelson, that there is a
1344 memorandum 190 on Selective Service in the Act which provides for re-employment of anyone going into the Service by the Company which he left.

Mr. Nelson: That still leaves a lot of questions to be decided, if the man happens to be a supervisor, doesn't it?

The Witness: Not many.

Q. (By Mr. Nelson) It leaves some questions?

A. No, not if he left our employ.

Q. In other words, you are so good at that at Packard's that you eliminate all questions?

Mr. Donovan: I object to that. He is arguing with the witness.

Mr. Nelson: In other words, the Packard Company is so careful in those matters that there are no questions to be decided, is that right?

The Witness: We are extremely careful in the matters and are quite familiar with the provisions of the Selective Service Act and the memoranda issued by the Selective Service Division.

Q. (By Mr. Nelson) Within those limitations, the man is without any supervisory representation, isn't he?

A. Correct, in the form of a Union, yes.

Q. And there will be no other supervisor who will come forward to speak for him and assist him. You do
1345 not recognize anybody competent enough to do it, any supervisory body?

A. Surely. I would speak for him, any of his superiors would speak for him and any of the executives of the Company.

Q. Sure.

A. If you are implying that we have no interest in the man at all, that is dead wrong.

Q. I didn't say that. I said he has no supervisory representation, recognized as such under the present setup.

A. In the form of a union? Yes, that is so.

Mr. Nelson: That is all.

Trial Examiner Jaffee: Are there any further questions of this witness?

Mr. Karasick: Yes.

Q. (By Mr. Karasick) Mr. Denison, do foremen in the plant have seniority?

A. Seniority? By that you mean men under a contract? No. But if you mean do we recognize the man's service in the Company or in our dealings with him, absolutely, yes.

Q. In what manner and to what extent?

A. Perhaps if you can tell me what you mean—I would say this: The demotions and promotions or anything that affects him—in those things, his length of service is considered. It may not be the only consideration
1346 but it is a consideration that is never overlooked.

Q. I would like you to refer to Company's Exhibit 25 again. You have a copy of that available, I believe.

A. Yes.

Q. On the second page there is an explanation of the method by which extra vacation credit is awarded. Those extra vacation credits are the same for non-exempt and exempt employees, are they not?

A. That is correct.

Q. Non-exempt employees mean employees below the rank of some supervisory status?

A. On a salary. In this instance this is a salary personnel policy, Mr. Karasick.

Q. And that would include non-exempt employees—that would cover hourly salaried employees who do production and maintenance work?

A. Not hourly salary.

Q. Salaried employees who do production and maintenance work throughout the plant?

A. If there were any, it would include them, but there are none. Non-exempt salary employees in general include clerks, stenographers, typists and draftsmen—

Q. (Interposing) Someone other than a supervisor?

A. Supervisor, administrator or professional.

Q. Now, again referring to that document, the provision for computing vacations allowed to both non-exempt and exempt salaried employees are the same, are they not?

1347

A. Yes.

Q. That is also true with respect to separation pay?

A. Yes.

Q. Turning to page 3, with respect to dismissals?

A. That is part of separation pay, yes.

Q. And discharges?

A. Yes.

Q. And resignations when two weeks notice has and has not been given?

A. Yes.

Q. And inductions into the Armed Services?

A. Yes.

Mr. Karasick: That is all.

Recross-Examination.

Q. (By Mr. Nelson) Mr. Denison, isn't it a fact—referring to the matters which we talked about a moment ago—that it is the overwhelmingly general practice to demote the supervisor instead of laying him off?

A. Yes.

Mr. Nelson: That is all.

The Witness: To keep him in our employ, yes.

Mr. Nelson: You demote him first?

The Witness: Yes, that is correct.

1348

Mr. Nelson: That is all.

Mr. Donovan: Mr. Examiner, may I have it appear on the record that a demotion may be necessarily involved in an attempt by the Company to retain a man in their employ rather than let him go sometimes under very difficult situations. I think counsel hopes for some unfavorable connotation from the use of the word "demotion." There might be action by the Company in retaining a man by transfer which would necessarily involve a lower pay and which would not be unfair and an unfriendly act between Management and that employee.

Trial Examiner Jaffee: Your statement is noted, Mr. Donovan. Are there any further questions?

Mr. Dahling: I have a few questions.

Redirect Examination.

Q. (By Mr. Dahling) I have a few questions on demotions and separation pay. We will say, Mr. Denison, that you have an assistant foreman and the production goes down and you have no further need for the assistant foreman, if that assistant foreman is then given other work with the rank and file, is that what you term a demotion?

A. Our terminology is generally transferred, I believe the word "demotion" as used by Mr. Nelson so applies, yes.

Q. You don't use the term "demotion"? You call it a—

1349 A. Yes, we generally refer to it as a transfer.

Q. This assistant foreman who would be transferred back into the hourly rate, would lose his status as assistant foreman but not necessarily because of any fault on his part?

A. That is true in a great majority of cases, yes, if it is tied in with a layoff in the department or division of the plant.

Q. In the days of the manufacture of automobiles, and a change of models, wasn't it necessary to lay off a large number of men?

A. Yes.

Q. That happened every year, didn't it?

A. A layoff every year? No.

Q. How often?

A. There would be a brief shutdown while a model change was going on. We did not look at it as a layoff. It might have been a temporary layoff. A layoff to us is a complete severance with the Company.

Q. And separation pay relates to a complete layoff, a separation of an employee from employment with the Company?

A. That is correct.

Q. And if your assistant foreman is transferred from an

assistant foreman to an hourly rated employee and takes up his job immediately, that is not considered a layoff?

1350 A. No.

Q. And he receives no separation pay in that event?

A. No.

Q. On the other hand, if he was separated from the Company and then hired back again, a matter of two weeks, he nevertheless, would get his separation pay?

A. Yes.

Mr. Dahling: I have no further questions.

Q. (By Trial Examiner Jaffee) Mr. Denison, I think one of the charts which is part of the Company Exhibit 22 series, indicates—if my memory serves me correctly—that there is a Labor Relations Department—and perhaps I use the word "department" rather loosely—a labor relations department, an industrial relations department, a personnel department and an employment department. I wonder if you could, for the record, indicate what those are generally and their relationship to each other.

A. The departments that you mentioned are all part of the industrial relations—let us say division—and the industrial relations division is split into two groups, one is the labor relations, which in general has to do with dealings with labor organizations, almost that and nothing more, and the other group is the personnel group which comprises the employment or procurement of employees and in general all employee services, such

1351 as feeding, insurance, hospitalization, coordination, gasoline rationing and a number of other matters that come under the heading of employee services.

Q. What is this department or group which is known as the employment department?

A. That is part of the personnel division or personnel department.

Q. Would you indicate for the record also the names of the persons who have charge, first, of the main labor relations division and these various groups you just mentioned?

A. The main division is the industrial relations manager, Mr. E. Patskowsky, the man in charge of labor re-

lations is Mr. Walter Smith, the man in charge of the personnel function is myself.

Q. And this employment section or group or unit, or whatever it is, the employment department?

A. That is headed up by a man by the name of C. W. McCoy.

Q. When, in the first stage of the grievance procedure, a rank and file employee goes to one or another of these four foremen and the matter is not settled there and it is necessary to go to the second stage, precisely where does it go?

A. In the first stage, if it is a grievance, a Union grievance, it is presented to the foreman by the
1352 steward. If it is not satisfactorily settled, the steward takes it to what is known as a district steward. The district steward contacts a man in the labor relations division that is assigned to him or his division and attempts to settle it there. In many cases they will come back to the foreman that made the original decision. When the district steward comes back to the foreman he is supposed to come back with the labor relations man. There are other procedures above that.

Q. When you say "come back to the foreman" what do you mean?

A. Well, here is a matter that the foreman has ruled on and given the chief steward his answer. The chief steward is not satisfied and wishes to appeal so he takes it to the district steward. The district steward then contacts the labor relations man assigned to the general area he is in. Now, they may be able to settle it between them and in most cases the labor relations man is particular and wants to discuss the matter with the foreman. He might do it on his own. If the district steward wants to discuss it with the foreman, he is supposed to go to the foreman with the labor relations representative with him.

Q. What I mean was, what do you mean by saying "back to the foreman"?

A. Carry the grievance back to the foreman. The
1353 district steward has never been to the foreman in any phase of it.

Q. At that point the grievance is primarily within the jurisdiction of the labor relations department?

A. Yes.

Q. And it is part of its job to go back to the foreman?

A. Yes.

Q. And it is not a case where the whole grievance is passed back to the foreman for handling?

A. The man who made the grievance is entitled to an explanation. Nothing is written in this stage of the procedure.

Q. What is the next step?

A. If the district steward is not satisfied with the decision rendered at that stage, he in turn takes it to the plant committee and the plant committee covers the entire plant and deals with the labor relations manager in that matter. At that stage it must be written.

Q. And there are further procedures still higher up, I presume?

A. Well, there is a labor relations committee set up by the Company to deal with the plant committee, as a further appeal step.

Q. All right now, would it be a fair statement, Mr. Denison—without attempting to give any percentages, which I suppose we can in the nature of things—

1354 that a very large percentage of the complaints—I won't use the word "grievances," for the time being—are made by the rank and file in the belief by such rank and file, whether right or wrong that they honestly have a complaint?

A. I think that is a fair statement, yes.

Q. Of course, I am basing my questions to you, on, what I am sure is your general overall knowledge of your job?

A. Yes.

Q. Would it be fair to say that they present and handle that grievance, or rather complaint in a substantially large portion of the cases, at least, would that be rightly or wrongly?

A. When you say "they" do you mean the foremen?

Q. No, the rank and file, to begin with. That is, they think—

A. (Interposing) You said "present and handle." Perhaps I do not know what you mean by "handle."

Q. I will strike the question and go to something else. Reference has been made by Mr. Keys to a booklet entitled "Foremen's Guide to Labor Relations," Bulletin Number 66 of the Division of Labor Standards of the United States Department of Labor. Are you familiar with that booklet in general?

A. I have read it sometime ago now, but I do not recall it in detail.

1355 Q. In a very general way?

A. Yes.

Q. On page 21 of that booklet under a heading on page 17 which is entitled and reads: "Suggestions for Handling Grievances," there appears in the first sentence of paragraph three on page 21, the following words: "Don't be afraid to say no when the facts warrant it." Do you think that is good advice?

A. I presume that is advice being given to a foreman?

Q. That is right.

A. Yes, when the facts warrant it, yes, undoubtedly.

Q. And I don't think it would be improper for me to say that I agree with you. Now that, as a matter of fact, I presume, is good advice, not to only the foremen, but to every Company official above the rank of foreman who handle the succeeding stages of the grievance procedure.

A. Yes.

Q. Now, we have started out, I think—at least, I have assumed that, and your testimony would tend to indicate, I believe,—that a substantially large proportion of those grievances presented by the rank and file, at least, are presented with the belief that they have a good grievance and complaint or squawk, to use an inelegant term.

A. Yes.

1356 Q. Now, I assume it is fair to say, or is it not, that in a great many of those cases, either the foremen or higher officials in the handling of those grievances or complaints may think otherwise?

A. Yes.

Q. That is, they may think the complaint or grievance does not have merit?

A. Let me clear my thinking on it. Your question is a matter of sincerity? Whether the man is sincere in his grievance? I think in most cases he is. Relating to merit of the grievance, that the foremen will rule on.

Q. As distinguished from sincerity?

A. Yes.

Q. Despite the rank and file employee sincerity, the foremen and the people higher up in the various stages may think there is no merit to the grievance itself?

A. Oh, yes.

Q. Although you would assume, I suppose, that they still think that the man who made the grievance was sincere in making it?

A. In most of the cases?

Q. Yes.

A. Yes.

Q. In other words, you have an awful lot of people—I won't use the word "awful"—a very large number of people to deal with, of course, as in any human institution and there are all kinds of people, except, of course, the fact that the Packard employees are probably better than other companies.

1357

A. Yes, well, we claim that and of course, the foremen too, generally.

Q. Now, will this be a fair statement: That however far this particular grievance may be carried, we may end up in a large number of cases, both a large and intrinsic number, relatively, where a grievance has been originally presented and thereafter carried on by the representative of the employee or even directly, with the utmost sincerity and good faith on the part of the person presenting and handling it for the employee, if he is represented by somebody else, yet, when the thing is over, the representative of the Company, including foremen of all grades, and the higher ups have been of the opinion that the facts have not warranted the remedying of that alleged grievance and have thus said no?

A. Yes. May I interject something there?

Q. Yes.

A. In grievance procedure I think it has been brought

out already that there are certain policies about grievances and I think it is difficult to define the word "policies"—that do not go through the foremen's hands.

1358 We are talking about grievances that go through the foremen's hands quite largely?

Q. Yes. Would you also say that by and large there are at least some people in the plant at any given time who think they have valid grievances?

A. Yes.

Q. And would you say that that thought on their part is reflected to the rank and file, or would you include foremen, using the word broadly?

A. No, I think they apply to foremen as well as to their estimate of their grievances.

Q. As to their particular estimate?

A. Yes, and of course, I qualify it by saying most of them. There are some instances, where there are sincere ones in the rank and file and among the foremen.

Q. Your last answer may be a bit ambiguous in the record. In most cases they feel sincerely, as well as in a few cases, some of them are insincere?

A. Yes, however, that means that even the sincere ones may be a delusion on their part from our point of view.

Q. To sum it all up, then, it comes down to the trite saying, "There are all sorts of people in the world".

A. Yes.

Q. Would you expect, as a man experienced in personnel relations, Mr. Denison, that what you have said

1359 about the situation at Packard is roughly true in other plants?

A. I do not believe I am qualified to answer that.

Q. Let's go back to May of 1944 for the moment. I gather from the testimony that a substantial number of foremen were on strike during that period. Is that your understanding? Sometime in May?

A. Are you referring to the Packard Motor Car Company?

Q. And other places as well.

A. A substantial number?

Q. Yes.

A. Yes.

Q. To put it negatively, would you say that there were not at least some of these people who thought that they had a substantial grievance and a valid one?

A. That were on strike?

Q. That is right.

A. Well, Mr. Examiner, I am not too familiar with the situation in other companies. I believe—

Q. (Interposing) Let's take Packard.

A. All right. The Packard strike, I think, it has been alleged, was for no other purpose than recognition. I do not doubt the sincerity of the foremen's desire for recognition of their Association.

Q. My question is specifically whether or not you believe that some of these foremen thought they had a valid

1360 grievance against the Company?

A. You are relating it to a strike that occurred in May, 1944?

Q. Let's put it this way: Do you think that at least some of those foremen thought they had valid grievances against the Packard Motor Car Company at the time in May when those strikes took place?

A. Without relating it to the cause of the strike?

Q. Yes.

Mr. Dahling: Mr. Examiner, aren't you asking the witness to delve into the minds of others? How can he testify as to what some of these foremen might have thought? I don't think there is much question that some of the foremen may have been sincere in their beliefs. Is that what you have in mind? I don't think there is any question about that.

Trial Examiner Jaffee: Let me put it in Mr. Dahling's language. Do you believe that at the time of these strikes in May, a substantial number or a fairly large number of these foremen, at least, were sincere and believed at the time of those strikes that they had grievances against the Packard Motor Car Company?

Mr. Dahling: You say "a substantial number of these foremen."

Trial Examiner Jaffee: Let us break it down. Let's
1361 say some.

Mr. Dahling: If the witness will answer, or rather, can answer what some man might have in his mind.

The Witness: I have some doubt how to answer that. I know a number of these foremen, I think, were sincere. We have said that they are deluded about their grievances. You are referring to a strike which they admit was caused merely for recognition of a Foreman's Union and was in no way tied to grievances. If at that time, you are asking me if they had some of them that were sincere and believed they had some grievances, I believe that is true.

Q. (By Trial Examiner Jaffee) Do you doubt the fact that of the large number of foremen involved at that time in connection with Packard, that some of them thought they had grievances against the Company aside from the question of recognition?

A. Some of them thought they had grievances?

Q. Yes.

A. Yes.

Mr. Donovan: Mr. Examiner, would you add to that question, "Before or after they joined the Foreman's Association of America"?

Trial Examiner Jaffee: At the moment the strike began, I will put it that way, at Packard?

The Witness: I suppose so.

1362 Q. (By Trial Examiner Jaffee) As a matter of fact, to put it in broad terms, as broad as possible, is it or is it not a fair statement to say that any given time among a thousand or so people, whether foremen or otherwise, we are inevitably bound to find some people who honestly and sincerely believe they have a legitimate squawk?

A. I agree. It probably applies to the National Labor Relations organization, as well as to any other, that is true.

Trial Examiner Jaffee: And in connection with that last remark, I also agree with it.

Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record. Are there any further questions of the witness?

Mr. Dahling: I have a couple.

Redirect Examination.

Q. (By Mr. Dahling) Mr. Denison, in this matter of grievances or complaints, I presume that superintendents might have complaints and be very sincere in their belief that they should be remedied?

Mr. Nelson: I didn't know that a superintendent could be mistaken.

The Witness: I haven't any doubt of it, Mr. Dahling—answering Mr. Dahling's question.

1363 Q. (By Mr. Dahling) How about your assistant manager? Might they also sincerely believe that they had a complaint?

A. Yes, and we hear them there, Mr. Dahling.

Q. Does that apply to the division managers also?

A. Yes.

Q. And to the vice-presidents?

A. Yes. I have even heard those.

Q. And I suppose the president himself might feel he had a grievance that he wanted to take up with the Board of Directors?

A. I suppose so.

Trial Examiner Jaffee: Mr. Dahling, you are approaching pretty close to God.

The Witness: That is a good list of possible clients for Mr. Nelson.

Mr. Nelson: That is quite an impressive list of probable clients, thank you.

Trial Examiner Jaffee: Mr. Dahling, I notice that you left out the industrial relations division itself.

Mr. Dahling: I was afraid to go into that.

Q. (By Mr. Dahling) Mr. Denison, I believe at this hearing this summer, the foremen put in testimony relative to certain alleged grievances, did they not?

A. Yes.

Q. And the Companies answered this testimony with
1364 the facts concerning the matter of these grievances?

A. Yes.

Q. Were any of the grievances which the foremen presented at those meetings substantial?

Mr. Nelson: Just a minute. That would be purely a matter of opinion. It is irrelevant and immaterial and he is seeking to pass upon all of the twenty-four volumes now.

Trial Examiner Jaffee: Read the last question, please.

(Question read.)

Mr. Dahling: Not any more than if the foremen are sincere in their grievances.

Trial Examiner Jaffee: The witness may answer the question. The answer may remain for the limited purpose of indicating the Company's position or claim as to such grievances. In other words, I am making the same ruling as I made when the question first came up and was presented, through evidence during the case of the Foreman's Association.

Mr. Nelson: But that question does not ask for a claim, it is for a statement of fact which can rest only in the opinion of the witness. I don't even know that he was there at all.

Trial Examiner Jaffee: I am not too much concerned with the form of the question. I may point out to you, Mr. Nelson, in the form at least, in which the answers of Mr. Keys were—to use him as an illustration—they went
1365 beyond the language of a claim and if I took those answers in and of themselves without the limitations I placed upon them—they indicate more than a claim. I have received them to indicate the claim only, although in form here and there they go beyond it. They stand, so far as this record is concerned with my ruling, as only a claim, a statement of position, you might say, a sworn argument, that is all.

Mr. Dahling: In accordance with your ruling, Mr. Examiner, the effect of the answer to this last question would be the same if the question had been framed in this way: Is it the claim of the Company that there were no substantial grievances?

Trial Examiner Jaffee: Yes.

The Witness: Is that the question I am to answer?

Trial Examiner Jaffee: Yes.

Mr. Nelson: That last one I still object to because their claims are irrelevant and immaterial and relate to another proceeding. Again it is not open to the objection the first one was.

Mr. Dahling: I am trying to comply with the Examiner's ruling.

Mr. Nelson: I disagree with his ruling to the effect that these claims can be stated here as evidence in this case. I would have no objection to those things
1366 being stated in a brief or argument.

Trial Examiner Jaffee: I think, Mr. Nelson, that I ought to be consistent, even if, although I do not believe it, I am consistently wong.

Mr. Nelson: That is what I suggested on this point. It has got us into all kinds of trouble.

Trial Examiner Jaffee: Go ahead. The witness said yes in answer to the question.

Mr. Dahling: No further questions.

Recross-Examination.

Q. (By Mr. Nelson) Mr. Denison,—

Trial Examiner Jaffee: (Interposing) Before you go ahead, I think I want to amend my last remark which was perhaps another one of those pleasantries. Of course, in saying that I believe I should be consistent, what I meant obviously is that if I afford a certain right or privilege to one side, I think I should accord an equal right or privilege to the other in similar circumstances, and that I have attempted to do.

Mr. Nelson: Will you mark this as Petitioner's Exhibit 43?

(Thereupon the document referred to was marked Petitioner's Exhibit No. 43 for identification.)

Q. (By Mr. Nelson) I show you Petitioner's Exhibit 43 for identification, being two typewritten pages cor-
1367 respondence size and ask you if you saw a paper identical with or similar to that?

A. I am not sure, Mr. Nelson. I will say this: The first section of this looks, without my reading it, to the agreement that the foremen brought in about two years ago.

The latter I do not think I have ever seen—that is, the last part of it.

Q. Wasn't the last part attached to the working agreement suggested?

A. No, the agreement was the only thing submitted.

Q. Did you ever see that in any form except the form that it appears there, Mr. Denison?

A. Are you referring to the first section?

Q. The whole thing.

A. I don't recall ever seeing the whole paper.

Q. The first portion you do recall some two years ago?

A. Approximately.

Q. Well then, hasn't there been the representation of grievances in writing made to the Packard Company for upwards of two years by the foremen?

A. In writing?

Q. Yes.

Mr. Donovan: Mr. Examiner, we formerly objected to such proceeding antedating and being prior to the election. Everybody agrees that it was not in force
1368 or effect. This is one of the things connected with prior events and antedates events which were held at Packard which is on record. I assume we have a continuing objection.

Trial Examiner Jaffee: I must observe—where, Mr. Donovan, do you get the phrase "everyone agrees"? I gather that there is considerable disagreement.

Mr. Donovan: Everyone agrees that there was a Packard election at one time. It is on the record here.

Trial Examiner Jaffee: That is not the way you expressed it.

Mr. Nelson: I am doing my best to disagree with you.

Trial Examiner Jaffee: He may answer.

Mr. Donovan: Mr. Nelson, have you copies of what you are showing the witness?

Mr. Nelson: I will dig them up. Yes, I can submit copies, but not in the form they have been attached to there. They are attached to a blue back and that is the only difference, I believe. That is Exhibit 43 and I give counsel copies thereof. It is a little different in form. It has a blue back.

Trial Examiner Jaffee: The copies are prettier, that is all.

Mr. Nelson: I was afraid to give it to Mr. Denison because he might want to keep it. Mr. Denison, I am having a carbon copy of a letter marked Petitioner's
1369 Exhibit 44 for identification.

(The document referred to was marked for identification as Petitioner's Exhibit No. 44.)

Q. By Mr. Nelson) Mr. Denison, I ask you if the Packard Motor Car Company did not receive on or about May 21, 1943, the date this bears, a communication of which Exhibit 44, Petitioner's Exhibit 44 for identification is a carbon copy and I ask you if you do not have the original of it or a carbon copy of it?

A. Well, there was addressed—this is addressed to Mr. C. E. Weiss. I have not checked every word of it but I believe it is a letter that was received by the Industrial Relations Department.

Q. Subject to comparison as to detail, it appears to be a letter originally—the original of which was received by Mr. Weiss, to your knowledge?

A. There is not much doubt about it.

Q. Now, I hand you Exhibit 43 and ask you if that is not the enclosure referred to in Exhibit 43. Didn't that come to Mr. Weiss along with 44?

A. Of course, that too was received by Mr. Weiss and I think we found it in our files at the office.

Q. Well, I will offer Exhibits 43 and 44 in evidence and then I will be glad to show counsel the letters.

A. I have not checked it word for word, but I have
1370 a copy that looks just about like it.

Mr. Nelson: We stipulate that we will agree with you on any differences and we will take your copy instead of ours on any difference.

Mr. Dahling: Mr. Examiner, the exhibit just offered I objected to on the ground that they relate to matters which predate the petition filed in this case. The letter Exhibit 44, I believe it is, being dated May of 1943 and presumably was accompanied by the agreement which is Exhibit 43.

Mr. Nelson: It is an agreement and statement of demand.

Mr. Dahling: The position is taken by the Company that it is immaterial and irrelevant and has no place in this proceeding, relating as it does and as I have said before, to matters which are not here involved and to things that occurred prior to the filing of this petition.

Trial Examiner Jaffee: Petitioners' Exhibits 43 and 44 are received.

Mr. Karasick: Just a minute, Mr. Examiner, I have not had a chance to examine the documents.

Trial Examiner Jaffee: The ruling will be revoked, at least temporarily.

Mr. Nelson: While Mr. Karasick is examining that, I am going to ask the Reporter to mark a three page carbon copy as Petitioner's Exhibit 45.

1371 (Thereupon the document above referred to was marked for identification as Petitioner's Exhibit No. 45.)

Mr. Nelson: Mr. Denison, I am going to hand you Petitioner's Exhibit 45 and ask you to locate, if you can, your copies of the letter to Mr. Christopher dated November 12, 1943 and the accompanying letter to the Conciliation Service, while Mr. Karasick is doing the other work. Perhaps we can make a little progress.

Mr. Dahling: Mr. Examiner, we might be able to save a little time here. I assume these are the two copies of the letters and we will not object to them on that basis. Our objection, however, is to the relevancy and materiality and would go to this, the same as Exhibits 43 and 44.

Mr. Nelson: I will offer Exhibit 45 so you can make an objection to it.

Mr. Dahling: Yes, this is the letter that I thought it was. I am referring to Petitioner's Exhibit 45 and I am assuming it is a correct copy of the original.

Mr. Nelson: If it isn't, we will accept your copy and correction on it.

Mr. Dahling: It is objected to and I will not repeat the objection for the same reasons that we objected to Exhibits 43 and 44.

Mr. Karasick: No objection to Petitioner's Exhibits 43, 44 and 45.

1372 Trial Examiner Jaffee: They are received.

(The documents heretofore marked for identification as Petitioner's Exhibits 43, 44 and 45 were received in evidence.)

Mr. Nelson: May I ask the witness a question?

Trial Examiner Jaffee: Yes.

Q. (By Mr. Nelson) To your knowledge, Mr. Denison, have any of these demands or grievances or complaints or requests, or whatever you want to call them, included in these Exhibits 43, 44 and 45, have any of them been negotiated or settled with the foremen, as far as you know?

Mr. Dahling: Mr. Nelson, will you divide your question? Have they been negotiated with the foremen?

Mr. Nelson: Up to the time of the strike?

The Witness: No.

Mr. Nelson: Or since that time?

The Witness: No.

Mr. Nelson: Or settled with foremen up to the time of the strike?

Mr. Dahling: You mean collectively by agreement with the foremen?

Mr. Nelson: With the foremen.

The Witness: As a union?

Mr. Nelson: Either way or as a group.

The Witness: As a union, no. Perhaps some things have been settled with individual foremen who have

1373 come and talked about them. We may have settled a number of them.

Mr. Nelson: Individually, you may have, but you do not recall any?

The Witness: I do not pay particular attention to the demands.

Mr. Nelson: Just as you sit there, Mr. Denison, you do not recall any that have been adjusted even with individual foremen or do you want further time to study it?

Trial Examiner Jaffee: Mr. Nelson, I do not think the question is a fair one.

Mr. Nelson: So far as you know, have you settled any of these grievances, demands or complaints, or anything

of the kind, even up to the present time with the foremen as such?

The Witness: As a Union?

Mr. Nelson: As an association or a group?

The Witness: No, not as a union.

Mr. Nelson: Now, as to individual matters that may be covered here, you are not informed at the present time, is that right?

Mr. Donovan: I will object—

Mr. Nelson: (Interposing) Let him make his own request. Do you want time to consider any individual case?

The Witness: I am looking here at number three. The Company does not have any sick leave provision—

1374 we have settled a number of requests in that regard, whether they are going to be paid for sickness and such things, is that what you mean?

Mr. Nelson: Yes. How many of them?

The Witness: Oh, my God! hundreds, hundreds.

Mr. Nelson: Those were all settled individually?

The Witness: Yes.

Mr. Nelson: Was there anything else that occurs to you from your examination of that?

The Witness: When I mentioned sick leave I said it was No. 3, it is No. 4. This letter of November 5, 1943, I am talking about. No. 3 has to do with seniority rights. If that refers to Union seniority on a collective basis, the answer is no, but if it refers to a consideration of a foreman's service, there have been a number of those settled with the individual foremen.

Mr. Nelson: Coming back to seniority there for just a minute, you know that the word is "rights," the foremen asked that they be accorded them as rights and not concessions by the Company. There is a difference.

The Witness: The whole thing is predicated on Union act of collective bargaining.

Mr. Nelson: It has reference to rights that they desire to establish collectively.

The Witness: We have not settled anything that

1375 way—in that way.

Mr. Nelson: Up to the time of the strike—up to the

time of the hearing last summer, even up to the present time?

The Witness: That is right.

Mr. Dahling: Do you mean, Mr. Nelson, that we have not negotiated with the Foreman's Association of America or bargained with them? Is that the point?

Mr. Nelson: I mean a little more than that. I mean that the matters covered by these communications are no more recognized as rights now than they were then.

Mr. Dahling: You mean rights of the Foreman's Association of America?

Mr. Nelson: Rights of foremen employed by the Packard Motor Car Company as distinguished from individual concessions that the Company might make. To establish them as rights is the point and he says they have not been done. That is the way I take his answer and that is the point of my question.

Trial Examiner Jaffee: You mean, I assume, to establish them as rights as for example by a contract?

Mr. Nelson: That is right. A contract exemplifies it perfectly.

Q. (By Mr. Karasick) Mr. Denison, I believe you testified that there are certain grievances that foremen
1376 cannot handle because those grievances are matters related to policies of the Company, is that right?

A. Yes.

Q. What would be some of those matters?

A. In a broad sense they are matters that go beyond the foreman's own department. If a steward asked his foreman for a general ten-cent increase for all the employees of the Packard Motor Car Company, naturally the foreman is in no position to answer that request or grievance. That is of the type I mean, something that would affect many more employees in general than the employees of the foreman—

Trial Examiner Jaffee (Interposing): It might affect—

The Witness (Interposing): —in question?

Trial Examiner Jaffee: It might affect the employees in other departments as well, by virtue of the fact that that grievance was of such a nature as would—in the

opinion at least of some of the employees—create a precedent which they could point to?

The Witness: Perhaps I can illustrate with an illustration. The foreman might say that he approves a general ten-cent increase for all his employees. It has to be applied to all the other employees in the same classification because the same classifications prevail
1377 in the plant.

Mr. Karasick: Can a foreman recommend a ten-cent increase for a particular employee or group of employees in his department?

The Witness: Yes. There is nothing to prevent him from recommending it. However, you want to remember that the grievance procedure refers to a grievance initiated by the CIO Union. In this incident of Company policy the steward takes it direct to the district steward and completely circumvents the foreman in his department.

Q. (By Mr. Karasick): What I am trying to arrive at is some understanding as to what you regard as Company policy. The line of demarkation between what a foreman would or could not handle as a grievance.

A. I don't know a better way to answer than: Those matters that would affect him or other employees. Suppose the steward wants to work his men six days a week instead of five. That is not possible because the operations in that department integrated with the operations in many other departments.

Q. Can you give me another example?

A. Well, I cannot give you any others that come to me at the moment that are as good as those two which clearly illustrate it.

Mr. Nelson: I will suggest a better one, the
1378 recognition of the Foreman's Association of America, isn't that a better policy?

Mr. Dahling: It isn't a policy, the answer is no.

Q. (By Mr. Karasick): How does a foreman know—

A. Another example would be suppose a steward and his men wanted a two-hour lunch period, naturally the foreman could not possibly settle that. He knows his operation has to be integrated with the departments ahead of

his and behind him. While his men are out to lunch the other departments are working. In a mass production type of industry that we are in, it just could not be done.

Q. Even though it would not affect other departments, the foreman could not handle such an agreement, could he?

A. I don't think that is quite true. If there was a department all of its own and not tied to any operation in any other department and if a steward and his men wanted a different lunch period or other hours of employment, it might be done. The question would be given serious consideration.

Q. Who would question it?

A. We are referring to hours of work, aren't we?

Q. You gave me an example of a two-hour lunch period.

A. Whoever controls the production of that department upon which it might have an effect, would have to help settle the issue.

1379 Q. We are assuming that it would not affect the production of another department or the operation of another department.

A. Of course the example is a little far-fetched, Mr. Karasick, it is hard for me to conceive—I gave it as an illustration of a point. I cannot think of a department quite in that position which does not affect anything else around it. It might be such that it would not have a very serious effect, however.

Q. How does the foreman determine whether a grievance which is presented to him involves the question of policy which he cannot handle?

A. Well, he would know his limitations in answering the grievance because of the effect it would have on some others. He would realize that there has got to be a Company policy established to settle that grievance. That is common sense on his part.

Q. Well, there is a sheet showing the most common type of violations in the plant and the discipline to be accorded employees who engage in such violations, that sheet the foremen have, do they not?

A. Yes.

Q. Does that roughly cover the scope and type of griev-

ances that a foreman would be empowered to handle which would not be regarded as Company policy?

1380 Mr. Dahling: That is the sheet, if I recall, that had to do with penalties which may be assessed because of rules that are broken by the rank and file, and it has nothing to do with grievances, there is nothing in evidence on that.

Mr. Karasick: Well, there is nothing that definitely indicates to a foreman what is a matter of policy and what is not a matter of policy, he has to use his judgment?

A. If you mean he is given a formula as to what he can handle or not, no. He uses his judgment. There are many other matters—that list you referred to a minute ago—that a foreman handles.

Q. Policies are matters that are determined by higher management, is that it?

A. Yes.

Mr. Karasick: No further questions.

Mr. Nelson: No further questions.

Trial Examiner Jaffee: The witness is excused.

Mr. Dahling: Just a minute, Mr. Examiner, I have a lot of further questions. It would be useless for us to go into them now if we are going to have an adjournment for lunch.

Trial Examiner Jaffee: In that case the witness is not excused.

Mr. Dahling: There are those matters of the partic-

1381 ular grievances and the letters. I am going to have to go into them quite fully.

Trial Examiner Jaffee: It is now a quarter of one. Would two o'clock be all right? We will recess until two o'clock.

(Thereupon a recess was taken until 2 o'clock p. m.)

1382

After Recess.

(Pursuant to recess, the hearing resumed at two o'clock P. M.)

Trial Examiner Jaffee: We will resume, gentlemen.

Mr. Dahling: I have no further questions of Mr. Denison.

Trial Examiner Jaffee: I thought you said you had some more?

Mr. Dahling: Yes, but during the recess I decided I had no further questions of him.

Trial Examiner Jaffee: All right, call the next witness.

Mr. Dahling: I will call Mr. MacAuley.

Trial Examiner Jaffee: Before questions are asked of Mr. MacAuley, I would like to make some observations with respect to the transcript of December 27, which I read last evening. Sometimes things come in so fast that as we read it over later there may be some possible ambiguity in a particular statement, and in order to remove any possible misunderstanding, it is advisable to supplement what appears earlier with an additional statement.

Thus, for instance, on page 1171 of the record, it shows that, among other things, Mr. Donovan said, and I begin with line 21:

"We offer it to show the claim of the Packard
1383 Motor Car Company in this case,"

and so on; and then at the top of page 1172, he continues:

"and that the so-called grievances of the foremen"

et cetera; or:

"no grievances at all."

I think I indicated several times in giving the basis for my ruling limiting certain testimony offered by the Petitioner that I would permit evidence as to the claim and I emphasized the word "claim" of the Company as to the strikes to which reference had been made in connection with the ruling that I have indicated.

However, Mr. Donovan, at that point, was offering, as I construed it and as I did then construe it, to put in evidence both the matters referred to; that is to say, the claim and the fact that the "so-called grievances" were "no grievances at all." Having thus in my opinion joined the competent with the incompetent and having at that point in the record not asked that evidence merely as to the claim be received, the Examiner took the position which the record thereafter indicates.

If the Company, as I said before, wants to put in evidence limited to (1) the fact that what the Association says is claimed was not in fact, claimed by it; or (2) the contention or claim or position of the Company that the reasons for the strikes were something else; or (3)
1384 that the events which occurred particularly during the War Labor Board Panel hearings affect the credibility of any of the Association witnesses or make them subject to impeachment, they may do that and they may offer any other evidence they desire to offer within the limitations previously indicated, and which I do not at this moment attempt to spell out to the extent I have previously done. I think, as a matter of fact, what I am now saying is probably indicated in the record as a whole, and, of course, my ruling is indicated not at just any particular line or paragraph where some comment has been made upon it, but naturally must be interpreted or, at least, should be interpreted, I think, from all the remarks I have made with reference to the subject matter.

Then a little later on, on page 1172, beginning at line 19, the transcript indicates I made this statement to Mr. Donovan:

> "I will permit you to put in evidence a statement as to the Company's claim,"

et cetera. I should like to elaborate on that a bit further by saying that the Company would be permitted and is now permitted to do that by any statement which is either sworn or unsworn; that is to say, the statement may be made by a witness on the stand who will testify to the claim, it may be made by counsel, or it may be made
1385 in any other appropriate way.

I think that concludes all the remarks I care to make at this moment. You may proceed, gentlemen.

Mr. Donovan: May I say, Mr. Trial Examiner, that counsel would like to review the transcripts referred to, together with the transcript containing the Trial Examiner's present statement, before we make any further statement on the record. We can do that over the week-end.

Trial Examiner Jaffee: Certainly, that is perfectly all right.

MORTIMER F. MacAULEY,

a witness called by and on behalf of the Company, being duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Dahling) Mr. MacAuley, what is your full name?

A. Mortimer F. MacAuley.

Q. What is your address?

A. 4661 Motorway Drive, Pontiac, Michigan.

Q. Are you related in any way to Mr. Alvin MacAulay, Chairman of the Board of the Packard Motor Car Company?

A. No, I am not.

Q. I believe your name is spelled differently?

A. It is spelled with an "ey" instead of "ay."

Q. Are you employed by the Packard Motor Car Company?

1386 A. Yes, I am.

Q. How long have you been employed by that Company?

A. A little over ten years.

Q. Mr. MacAuley, are you a graduate of any engineering school or college?

A. Yes, University of Michigan, chemical engineer.

Q. At the time you were a student at the University of Michigan, what did the term "chemical engineer" include?

A. General engineering, including chemical engineering.

Q. During what year did you graduate?

A. 1922.

Q. Will you give us a description of your experience in the automobile industry, commencing with the date of your graduation from the University of Michigan?

A. In 1922 I went to the Olds Motor Works in Lansing and I stayed there until 1926.

Q. Is that the company which manufactured the Olds automobiles?

A. Yes.

Q. All right, will you go ahead?

A. At the Oldsmobile Company I started in with plant

layout work, converting piece work into the bonus system and setting up material control systems. I did that for the years 1922 and 1923. In 1924 I became an assistant master mechanic. In 1925, to 1926, I was master mechanic.

1387 I left Olds in 1926.

Q. Before you get to your next position, you say you were an assistant mechanic and a master mechanic?

A. Yes, sir.

Q. Just what sort of job was that?

A. If a part was released by the planning department to be manufactured, it was turned over to the master mechanic and it was his job to see that the job was processed and broken down to individual operations, that the tools were specified, the machines were specified, the tools ordered, tools designed, tools purchased and the machines purchased. We did that by working with the different divisional managers, superintendents, general foremen and foremen.

Q. After you left the Oldsmobile Company, where did you go?

A. I went to Richmond, Virginia into a consulting engineering firm, the L. A. Blackburn Engineering Company. We were engaged in manufacturing—in converting over former buggy plants and wagon plants into bus body plants and also in converting a warehouse into a cotton seed oil plant.

Q. How long were you with the engineering firm?

A. One year.

Q. Then what did you do?

A. In 1927 I went to the Pontiac Motor Car Company, Pontiac, Michigan.

1388 Q. What were your duties there?

A. Starting in 1927 we laid out the new Pontiac plant and I was the Chief of Standards.

Q. The Pontiac Company, is that a part of the General Motors organization?

A. Yes, it is.

Q. And was it at that time?

A. Yes, sir.

Q. Have you stated all of your activities while you were at Pontiac?

A. No. In 1928 I was appointed general foreman and later superintendent of the paint, polishing and plate departments. In 1929 to 1931 I was manager of the assembly plant, the paint, the plating, the polishing and the body trim; that is, at the time we were building open bodies only. The last part of 1931, due to a new program, I returned to the planning department and stayed there about six months.

Q. Will you just continue with the experience you have had in the industry, Mr. MacAuley?

A. In the latter part of 1930 I left the Pontiac Company and went to the Buick Motor Car Company where I was employed in manufacturing and research, in charge of plant layout, standards, material tests and tool tests. I stayed there until 1934 and then I went to Packard.

1389 Q. And you have been at Packard since that time?

A. Yes, sir.

Q. What have been the various positions you have held in Packard?

A. I started at Packard as assistant manager of the Small Car Division.

Q. When you say Small Car Division, you mean—

A. That's the 120 at that time.

Q. Did you go to Packard at the time they brought out the small car, so-called?

A. That's why I went there.

Q. What other positions have you held at Packard?

A. In the latter part of 1935 or the early part of 1936 I became manager of the Small Car Division and in about 1938 I returned to become a special assignment man to Mr. Christopher, which was embodying the consolidation of the large car and the small car divisions. In 1940 I was assigned to the Aircraft Division work.

Q. That is the division which is now manufacturing the Rolls Royce?

A. Yes, sir, I stayed here until about two months ago when I returned to the Car Division.

Q. What are your present duties in connection with your job in the Car Division.

A. Known as the manufacture and control manager.

1390 Q. What does that mean?

A. That has control of all procedures and standard practices, organization charts, manufacturing costs, manufacturing estimates, material control and material handling.

Q. When you say material control, that means controlling the material you need?

A. That controls the amount of raw material ordered and the orders issued to the shop and how many pieces are produced, to see they are produced and to synchronize all the parts being manufactured so that we have a definite building schedule and have the necessary parts.

Q. You are setting up that department at the present time, are you?

A. That's right.

Q. It is not completely organized and functioning yet, is it?

A. No, it is not.

Q. Mr. MacAuley, what general term is given to the type of production carried on by automobile companies?

A. It is known as mass production.

Q. Can you tell us just what mass production is?

A. Well, I think I can tell you better by comparing other production.

Q. Use your own methods, Mr. MacAuley.

1391 A. In ordinary production an operator will usually start from the raw material and take the part through the subsequent operations and will probably do a series of operations, maybe even to completing the part himself. Whereas, in mass production, we break that up into small, minute operations. Maybe each operation is only a minute or a fraction of a minute's time and we use mostly specialized machines and special tools.

Q. In that case the operator, of course, does not need to be nearly as skilled as under the circumstances where he probably made the whole part?

A. That is definitely so. That is why we have to do it. In other words, we would never have been able to build a Rolls Royce engine; for example, in the motor building alone it takes quite an experienced motor builder to build

it all the way up, but in breaking down the operations, there is no necessity for the skilled workers.

Trial Examiner Jaffee: And the use of special purpose tools helps in that connection?

The Witness: Definitely.

Q. (By Mr. Dahling): Getting back to the automobile, and, of course, that is the product that the Packard Motor Car Company really manufactures, is it not?

A. Yes, sir.

Q. This period during the war it is merely helping
1392 the country by manufacturing articles of war?

A. That's right.

Q. Now, getting back to the manufacture of cars, will you outline for us how it starts and how it is developed? I suppose it first begins when someone has an idea of a car. Will you develop it from that time on?

A. It usually starts with the president calling a meeting of his vice-president of engineers, vice-president of sales, the comptroller and the vice-president of manufacturing, anybody interested in the car itself. In that meeting the vice-president in charge of sales is requested to give his views on the type of automobile and the volume and price range in which he thinks the public would be interested. The vice-president of engineering is then instructed to go out and design an automobile, maybe design two or three automobiles within that range. During that design period the vice-president will call on the others, the divisional manager will call in general foremen and foremen for general information, for ideas of the different methods for manufacturing given parts. In other words, there may be some parts designed by the engineer that as far as production is concerned, is next to impossible to make, so we call in the people that know more about it and have consultations with them.

Q. Pardon me, just a minute, Mr. MacAuley. This
1393 testimony you are giving now is from your own personal knowledge?

A. That is correct.

Q. And you have been a party to these things you are testifying about?

A. Yes. And from the model, they make up a model, and from that model they will also have criticism from the manufacturing department.

Trial Examiner Jaffee: There is usually more than one model made, is there not?

The Witness: Oh, yes, sir.

Trial Examiner Jaffee: In other words, you start with a small model and end up with a big model?

The Witness: The stylist usually makes a small clay model, but as the car begins to be designed he goes into full-sized models.

Q. (By Mr. Dahling): And there might be more than one model of a car?

A. There might be all the way up to thirteen or fourteen models of that one car.

Q. And there might also be cars in different price ranges?

A. That is correct, but I am just taking one in general because they are all treated about the same. At the time the wood models, that is what I will call
1394 them, are being made in the Experimental Department, the different people involved in the manufacture of that are called in for their advice.

Q. Who are those people?

A. The divisional superintendent in charge of that particular piece, right down through to the foreman. It never goes below the foremen, because that is strictly confidential information.

Q. Because that would be your car that would come out at a later time, I take it?

A. All the way from a year to eighteen months later. After that is approved, temporarily at least, it is drawn up in a final print and that print is released by the Engineering Department.

Q. When you say a final print—

A. (Interposing): That is of a given part: I am down to an individual part right now. After that part is released, that is their only authority to proceed to manufacturing it. It is released first to the Planning Depart-

ment and the Planning Department decides whether they are going to make that piece or buy it.

Q. There is a planning department at Packard?

A. Yes, sir. Oftentimes there are people in business who are set up with special equipment, which we know of, and it is better to buy the piece from them than

1395 to manufacture it; in that case we would purchase it. Then it is released to the master mechanic.

Q. You have described the duties of a master mechanic at Olds; are the duties of a master mechanic at Packard's practically the same as at Olds?

A. Yes, sir, the master mechanic gets his process men, who work with the superintendent, general foremen and foremen, in deciding what tools they will use and what machines they will use.

Q. Have you been present at any of those conferences?

A. Yes, sir.

Q. I suppose those conferences might continue over a period of time?

A. Oh, no, it goes on for days on some complicated pieces. After the routing is agreed to, it is written up in pencil and signed by everybody concerned, that they agree that they think this is the way to make that part. Then the routing is typed and the routing becomes the official word all through the shop and through the stores, what would be ordered out and what sequence of operations.

Q. What do you call that particular document?

A. Process routing.

Q. Is that prepared in a specific department in the Company?

1396 A. It is prepared in the master mechanic's office by his process man.

Q. The processes are in the master mechanic's office?

A. The process routing is ordinarily, although we have some process men located in the various divisions with the divisional manager, and they prepare the routing and clear it through the central process routing group.

Q. Then what follows, Mr. MacAuley?

A. From that, the tools are designed, if they are special tools.

Q. Who designs those?

A. There is a group of men known as tool designers working for the master mechanic. They are approved and ordered.

Q. Who approves them?

A. Well, sometimes it goes right through to the general foreman to approve and sometimes they don't approve them; in other words, the general foremen are willing to accept the process man on the drawing after being satisfied. Sometimes the general foremen want to approve it themselves. We have had cases both ways, it depends on the general foremen. We have even had the foreman approve them in many cases. After approval, the tools are turned over to the Purchasing Department for purchasing.

Q. When you say "tools" ordinarily that would
1397 mean to me a wrench or a screwdriver. What does it mean in automobile companies?

A. Well, there are a number of tools. First, there are the non-perishable tools which we don't ordinarily replace every year. Those are the holding fixtures which hold the part, and gauges, some types of gauges; there are arbors and, oh, it might be a special drill head. Then we have what we call the perishable tools.

Q. Before we get to that, you say you have some tools for holding fixtures?

A. We call them holding fixtures.

Q. Holding fixtures, and what are they used for?

A. That's to hold the piece on the machine in the correct position and in the same place each time so that each piece will come out the same.

Q. What are these arbors?

A. We use those for holding grinding wheels, sometimes for holding the piece itself.

Q. I suppose tools of that character must be very carefully built up?

A. That is correct, because every piece must be as near alike as we can possibly make it.

Q. Those are the tools, when you talk about your tooling department, those are the tools prepared in the tooling department?

1398 A. That is correct.

Q. And you sometimes buy those from outside sources, from what we term here in Detroit the tool shops?

A. Yes, sir.

Q. Then there was another type of tool you were going to tell us about?

A. Perishable tools. Those are tools that are replaced a number of times during the year. They are usually a cutting tool. Under that would fall such things as drills, reamers, cutter head blades, plug gauges, any tool that is worn out and has to be replaced during the year. Those are usually classified as perishable tools and there are two types of those, the special and the standard.

Q. What do you mean by special?

A. Well, it is easier to explain the standard. The standard is a tool that is usually made by manufacturers. For instance, standard drill sizes, they may come at thirty-second intervals, whereas a special may be a decimal drill, which is not catalogued and has to have a blueprint in order to be made. Usually any tool we have to make a drawing of to purchase it, we call a special tool.

Q. Or you might make a drawing of it and build it in your own tool department?

A. That's right; it is still called special.

1399 Q. Then these tools all have to be arranged for before you can even think of getting started in building the parts?

A. That is correct. Those are all ordered and the divisional manager gets a copy of the orders so they know that they are on order at all times. The master mechanic will see that enough parts are ordered; there are at least three set-ups of those tools ordered and one is given to the foreman, one in the grinding room, one in the toolroom and one in the crib.

Q. When you say crib, is that where you keep the tools?

A. Yes, sir, that's in the departments.

Q. When you say departments—

A. (Interposing): The manufacturing departments.

Q. Those would be the smaller departments into which the division is broken up?

A. That is correct.

1400 Q. (By Mr. Dahling) Then what happened?

A. After the tools—at the same time that the tools are being ordered and designed or ordered and being made, the planning department at the present time has ordered the material, whether it be bar stock, rough castings, forgings, or whatever it is. They have that material on order and have it scheduled as to how many pieces they want and the time they want it. When both are received they are delivered to the department in which they are to be made and at that time it is the responsibility of the foreman to set up his department with these tools with any help he requires. He can call on anybody he needs to help him. That is, master mechanics, divisional tool engineers, the process man, the standards division, or anybody else he requires any help from, he can get it.

Q. Now, there was some talk here about the layout of a department; who prepares that particular layout?

A. That layout is being made at the same time as the tools are ordered. The routing is completed and it goes to the plant layout department and they take a routing and make a rough layout of the department as they see it, working with the foreman and the general foreman at the time they are being made. After it is finally approved by the foreman, general foreman, divisional manager, the layout is completed and the prints are sent

1401 to the plant engineering department, who in turn estimates the cost of setting up the department.

Q. That layout, would that disclose the machines, and where they are to be set?

A. That discloses the location on the floor, the heights from the floor, the conveyors in between the machines, or anything that has to do with the operation itself is shown on the layout, lights, air hose; if there are special lightings, it shows it there and air hose it is shown, and water line is shown and conveyors and conveyor heights and anything that is needed in that department is shown on that layout.

Q. After that is prepared and approved, is it placed upon the floor of the department in accordance with the layout?

A. Definitely.

Q. Then, just continue with that car of ours.

A. After the foreman starts his job off and he finds there is necessity to change the routing or change an operation—he may find he has one operation which is too complicated and has to be broken down into two operations, he requests a change in the operation, or he may find the reverse, that he has two operations set up and he can do it in one, so he requests that. At the same time we may have specified at this time that certain oil was cutting—or that certain compounds or a grinding wheel, to the best of our knowledge at the time, was the
1402 best wheel to put on the job. Then we can find that we are wrong. He does and has the privilege of requesting a change in that run or a test of those different kinds of wheels to find which kind of wheel or oil he wants.

Q. Just staying on the subject generally, when these departments are set up, they commence functioning and manufacturing the various parts of the car, is that right?

A. That is right.

Q. That is, those parts that you have not purchased?

A. That is right.

Q. Approximately how many parts would there be in an ordinary automobile, that is, different parts, without duplication?

A. Roughly, 4,000 different parts.

Q. And of course, you might use a number of the same parts on the car?

A. That is right, there are some that we use as high as a hundred of the same pieces or part number in different places.

Q. What would you say would be the approximate total number of parts which would go into the making up of an automobile?

A. 14,000 or 15,000 pieces.

Q. Now, as those parts are manufactured and pur-
1403 chased, are they fed into an assembly line in some way?

A. Yes, they are scheduled right into a definite assembly at a definite rate of speed.

Q. Is there more than one assembly line?

A. There are more than one assemblies and sub-assemblies off the main line. On the motor assembly line we have some sub-assemblies off the main motor line and off the axle assembly line we may have sub-assemblies of axle parts to make into a main assembly and we have the same thing with the body and the final car.

Q. When you come to the line on which you assemble the final car, how are these various parts fed into that?

A. Well, you start out with a chassis assembly first.

Q. You start off with your frame, which is purchased complete ordinarily, and then the different brackets are added to that.

A. As it goes down the line it goes down a definite line and is fed into a gas tank sub-assembly that is fed in from the side line.

Q. And that has to be synchronized with the speed of the chassis?

A. Yes. It might be an eight-cylinder body going down at one time and a six-cylinder body the next time. We have to see that the eight-cylinder gas tank goes on the eight-cylinder car and the six-cylinder gas tank
1404 goes on the six-cylinder car and it might be a Super Eight and we have to have a complete rear axle go on the front axle assembly which will eventually be on the complete motor assembly. When the motor hits the line, it is complete with the motor and transmission.

Q. But in building up your motor you might have an assembly line for that purpose to build up the motor?

A. There will be an assembly line for the motor line, and sub-assemblies off the side line.

Q. Is that the type of assembly line that Mr. Turnbull has charge of?

A. Well, Mr. Turnbull is on the Rolls Royce engine, which is a little more complicated than the ordinary car engine.

Q. However, it is broken down the same way?

A. There are sub-assemblies of his line.

Q. The assembling of a motor is just one part of the job in building the car?

A. Yes.

Q. You would have to assemble the rear axle and other parts?

A. That is right.

Q. And they all have to be routed into the main car assembly line and synchronized as to time and types of material and so forth?

1405 A. That is right.

Q. Where is the design made for the setting up of these various assembly lines?

A. Well, the general plan is laid out in the plant layout department just like any other department. That is laid out in the same manner and in consultation with the men who are going to do the work on it.

Q. And of course, the car comes off the main car assembly line as a completed automobile, is that right?

A. Yes.

Q. In the days when you were building cars, how often might you have model changes?

A. Usually once a year.

Q. When you had those model changes, what would that require in connection with new processing and routing?

A. It meant considerable changes because the major parts were usually changed on a model. For instance, you almost invariably changed your fender, your bonnet, your radiator or body appearance and that would in turn affect a lot of the chassis work.

Q. So you would have to each year, in the old days, if you changed your model, go through a great deal of this detail in getting the plant set up?

A. That is right.

Q. For service at least once a year?

1406 A. That is right.

Q. Were there any changes during the year?

A. There were times when we would have to make engineering changes during the year due to some defect that might crop up or something the public did not like about the automobile. We would have to change it and we might change it during the model year.

Q. When you were starting in with a new model, the first few runs might develop quite a few defects, isn't

that so? You might find that your layout is not perfect when it starts out?

A. That is right.

Q. Where do you in Packard get reports on the operation of your layout in the first instance, we'll say?

A. Almost all I ever remember came from the foreman himself. He would call us up or else send through a move order requesting or asking that a machine or some equipment be moved to a different location and that it was not possible to function. Sometimes it came while making time studies if we found that the operator was doing extra work and that it was inconvenient for him. The request would be talked over between the time study man and the foreman and the result is that we would get a request to move.

Q. Of course, at the present time you are manufac-
1407 turing the Rolls Royce engine and marine engines and you do not have any model changes?

A. There are changes, yes.

Q. But there are no decided changes as in the old days of the automobile?

A. Yes, the engine is changed on the Rolls Royce quite considerably from single to two stages.

Q. When those changes are made, you have to go through the processing and routing again?

A. It is the same thing.

Q. And there are improved techniques in the operation of the particular layout and suggestions for improvements that you receive, you say, from the foremen?

A. Yes.

Q. And you consider that a duty of the foremen to check into those matters and make these reports?

A. Certainly.

Q. Now, you spoke about a routing sheet. Do you have an example of that sort of document with you?

A. Yes, I have. Here is the original on a simple connecting rod blade bolt.

Mr. Dahling: Will you mark that as Company's Exhibit 29 for identification?

(Thereupon the document above referred to was marked Company's Exhibit No. 29 for identification.)

1408 Q. (By Mr. Dahling) Mr. MacAuley, I show you a series of sheets clipped together and marked Company's Exhibit 29 for identification and ask you what they are.

A. This represents one of the original routings, or the original routing on part number 608601, which is a connecting rod blade bolt for the Rolls Royce engines. It is the original set of routing made on that part.

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Mr. Dahling: I will offer Company's Exhibit 29 in evidence.

Mr. Nelson: Will you fix the time on this?

Mr. Dahling: I will go right through that then.

Q. (By Mr. Dahling) Mr. MacAuley, when was this routing sheet prepared?

A. This particular routing was prepared in April, 1944.

Q. And where was it prepared? At the Packard Motor Car Company?

A. Yes.

Q. Is it part of the document of the Packard Motor Car Company?

A. Yes.

Mr. Nelson: Do you mean by that, has it been used in the work?

1409 Mr. Dahling: No, just that it is a document.

Q. (By Mr. Dahling): Has it been used in connection with the manufacture of the part which is described therein?

A. Yes.

Q. Is it in use at the present time, so far as you know?

A. This particular part is now being released to be purchased on the outside. Whether or not it has all gone out at this time, I am not sure.

Q. Is the same part still being used in the engine?

A. It was manufactured up to now, but whether it is still being made, I cannot tell you that.

Mr. Dahling: Do you have any further questions you want me to ask him?

Mr. Nelson: I think that it has been established as a part of the record of the Company, and I think that is true. We do not question it.

Mr. Karasick: Mr. Examiner, I would like to know what the purpose of the offer is.

Mr. Dahling: I would say generally in answer to your question, Mr. Karasick, that we want to show on this record just what is an automobile company and just what is mass production. Have you any objection to such a showing?

Mr. Karasick: I do not see the materiality of the
1410 proffered document and I object to it. I think the record is unduly burdened with a great deal of material that is irrelevant and immaterial.

Mr. Dahling: Mr. Karasick, you will have an opportunity to object to it when it goes in.

Mr. Karasick: You have offered it and I object to it.

Mr. Dahling: Do you have an objection to it?

Mr. Karasick: That is right.

Mr. Dahling: Then I will ask for a ruling.

Trial Examiner Jaffee: Well,—

Mr. Dahling: Mr. Examiner, I can go into great detail in connection with this document. I could string it out for fifteen or twenty minutes here if the gentleman wants it done.

Trial Examiner Jaffee: I apparently have an automobile here now.

Mr. Nelson: Now you can make your own.

The Witness: That is just one piece.

Trial Examiner Jaffee: Petitioner's Exhibit 29 which consists, I gather, of thirty-six sheets bearing thereon duplicated typewritten material, pencil material, ink, and assorted crayon, et cetera, is received in evidence.

1411 (The document heretofore marked Company's Exhibit 29 for identification was received in evidence.)

Q. (By Mr. Dahling): Mr. MacAuley, I call your attention to what would be the second sheet of Company's Exhibit 29, and ask you what that is?

A. What do you mean, Mr. Dahling?

Q. What does that disclose?

A. This discloses here the operations to be performed.

by the different departments. In other words, it starts with the "U. D. L. Department" and goes—

Q. Before you get to that—those are the operations in connection with the manufacture of this one part?

A. This particular piece 608601.

Mr. Nelson: What was that part again?

The Witness: Connecting rod blade bolts.

Q. (By Mr. Dahling): The first sheet shows the departments that that progresses through?

A. That is correct. It starts in the U. D. L.—

Q. What is the U. D. L.?

A. The automatic screw machine.

Q. And there is one operation in that department?

A. Well, there might be one or more.

Q. Then where does it go?

A. To the heat treat department, the G. J. J.

Q. What is done there?

1412 A. It is carbonized or hardened, I don't know what this particular one calls for, but I would have to look it up.

Q. We will get to that later. Then what department does it go to?

A. It goes back to the machining department.

Q. And from that department where is it routed?

A. After the heat treat it goes to the machining department to be ground, and from that department it goes to the U. D. A., which is a miscellaneous machine, for further operations from the U. D. A. it goes to the U. D. E. for burring. Then it is returned to be etched; afterwards it is ground again and there are further drilling operations.

Q. These are the processes to which this goes?

A. Yes.

Q. The first or second sheet of this exhibit discloses what departments that work is done in?

A. That is right, and the total times in each one of those departments.

Q. That is more or less the master sheet showing the progress of this part?

A. That is right, the operations which this part must go through before it becomes a completed part.

Q. What do these other sheets show, take the third sheet of the exhibit?

1413 A. The third sheet breaks it down into the detailed operations, showing all the tools that are used on this particular operation No. 10.

Q. What would operation No. 10 be?

A. In this particular case rough turn, O. D., and break-down for cut off, finished turn, .460 diameter.

Q. What does that mean?

A. That is the diameter at that particular area as shown on the blue print. To .475, the form chamfer 45 degrees, by .359 diameter and face end.

Q. What do you mean by "face end,"?

A. To cut the end off square. Finished form .670 to .675 diameter.

Q. Now, Mr. MacAuley, that is set forth, what you have just read is set forth on the third sheet of Exhibit 29?

A. Sheet No. 2, this is just a cap sheet.

Q. That would be really numbered sheet No. 2?

A. Of the thirty-six, yes.

Q. And this operation as set forth on that sheet takes place in Department 10, that is the tenth operation?

A. Yes.

Q. What department is that?

A. U. D. L.

Q. What is the U. D. L. Department?

A. The automatic screw machine.

1414 Q. You read a number of things here that are done. In language that a lawyer understands, just what is it?

Trial Examiner Jaffee: Now, you will really have to make it simple.

Q. (By Mr. Dahling): In simple language.

A. Really what they are doing here is taking the bar stock and blanking out a piece out of that which will have subsequent operations performed on it after heat treating, which will make bolts of it and finished out of it. This is merely roughly form of bolt, when it comes out of that department.

Q. In other words, the bolt, when it comes out of that

department, has to have the dimensions and other physical attributes set forth in this routing sheet, sheet No. 2?

Trial Examiner Jaffee: Only a few of which you referred to orally?

The Witness: That is right.

Q. (By Mr. Dahling): Now, I note on the left-hand column of sheet No. 2 the letter in capitals M. U. followed by "100," what is that?

A. That represents the classification of the man that is to do the job.

Q. That would be the worker who does the job?

A. Yes.

Q. And that classification is put in there for what

1415 reason?

A. So that the foreman and everybody else connected and using the routing will know on this particular operation that they are supposed to have an operator M. U.-100 man, which happens to be an automatic machine operator.

Q. That classification covers automatic machine operators?

A. Yes, automatic screw machine operators.

Q. And he would be the type of man to carry that classification and to carry out the operation as set forth on No. 2?

A. The reason we put that on there is that we may have men in similar departments entirely removed from this particular job, doing the same identical work. So we can inform the foreman that is the classification so that we aren't running one classification in one department and another in another, we specify that in the central office, the type of man that should be on that job and his classification.

Q. That is the type of man then that is sent to the foreman in this particular department to operate that job?

A. The foremen from these routings will requisition a M. U.-100 man. From the time that we show on here, which is a total time per piece, and the schedule we

1416 give him, he will know whether he needs one or two or three men or whatever it is, to operate. We show

that this particular job—on this particular job the man is to operate two machines. In other words, the time is shown as a two-machine time and that this one operator is to operate two of these machines.

Trial Examiner Jaffee: I notice that there are three columns headed "Standard hours" and that there is a sub-heading in the first column which says "allowance." On this particular sheet there is a figure .0023, what does that mean?

The Witness: That is in decimals of hours.

Trial Examiner Jaffee: Specifically what does that mean as applies to the markings on this particular part?

The Witness: This is the allowance we give the operator in changing tools, his personal allowance, for tools, and we know that there is some unavoidable scrap. We admit that he cannot help that scrap and we allow that extra in there for that scrap. On certain jobs we know we can expect a certain amount of scrap in it. So you will give him that allowance; also give him time for cleaning up his machine.

Q. (By Mr. Dahling): That is done through your time study people?

A. Yes.

1417 Trial Examiner Jaffee: The second column headed "Floor to floor," and there is a figure there. What does that mean?

The Witness: .0110 represents the time for the completion of a cycle to complete the operation from floor time to floor again. That is, from the time he picks up a piece and puts it in the machine it goes through a machining cycle and is completed and returned—the piece is returned to the bench again and we call it a floor to floor—it could be bench to bench.

Trial Examiner Jaffee: The next column is headed "Total" and which bears the figure .0133, that is merely the total of the first two columns?

The Witness: That is correct.

Trial Examiner Jaffee: There is another column after that headed "Floor to floor production per hour" and there is a figure there of 90.9.

The Witness: That is the number of pieces per hour that that machine will produce with no allowance provided.

Trial Examiner Jaffee: Then there is a last column which is headed "Required average hourly production per 100 per cent efficiency per shift," and in that particular column there happens to be the figure written in "75" and that figure is encircled. What does that mean?

The Witness: The encircle does not mean anything
1418 in that case.

Trial Examiner Jaffee: Suppose we disregard the circlement.

The Witness: In that case it means that with a total time of .0133, which represents the floor to floor time plus his allowance, that an operator has to produce 75 pieces per hour.

Trial Examiner Jaffee: So that when the foreman knows how many pieces are supposed to be produced by him, that is to say, by the men under him, and he sees from the sheet that he gets, the labor routing and the operation sheet how many pieces per hour he is supposed to put out—that is supposed to be put out by each man, he then knows how many men he needs.

The Witness: That is right.

Q. (By Mr. Dahling): Is it important that the men working on this operation produce that many parts per hour?

A. Definitely, there has to be that production or we will run out of parts and eventually there would be a stop in the schedule.

Q. And if you run out of parts?

A. Well, you tie up a whole line, assembly line or a motor line or any one of the lines.

Q. So it is vitally important that this production is
1419 kept going?

A. That is right.

Q. And at the rate set forth?

A. That is right.

Q. Now referring back again to page 1 of this exhibit, that is, I am referring to sheet No. 1 which is really the second sheet—

A. It is sheet No. 1 here.

Q. —of the exhibit, I note that there are certain places designated for approval. Who approves the routing sheet?

Mr. Nelson: We would like to know when it is done.

Mr. Dahling: You may ask the question later.

Mr. Nelson: I don't know whether it is after or before it goes to the shop.

Trial Examiner Jaffee: We only get sufficient intelligence after we read the entire record. I prefer to have the time set.

The Witness: These routings are signed in the original say in pencil before they are typed in by the typographical department. We do not type anything in unless the signatures are on. It is not sent to that department until they are typed.

Q. (By Mr. Dahling): The signatures provided for are whose?

1420 A. Process department, time study for the classification of the operator and the time, the foreman and the general foreman and the manager of the division.

Q. Now, Mr. MacAuley, in your personal experience, tell us, are those approvals actually placed on this routing sheet by the parties that you named?

Mr. Nelson: I object to that. It obviously isn't. There is the evidence of it there (indicating). There isn't a foreman's name on that. You can turn those sheets as far as you like. Why should he be asked to testify contrary to fact. The only foreman on there is the time study foreman.

The Witness: At the time this was signed there was Wendt's signature on it, Hanley signature on it, Brzeski signature on it and Casey, who was a foreman or general foreman. As the manager, Crawford signed it. Foreman of the Process signed it, Radomski; J. Budnik for the time study as well as Nadeau; for the process Clark and Duclos. It was also signed by J. Cook who is foreman of the Process Department.

Q. (By Mr. Dahling): When, if you know, was that signed? Before or after it was sent into the shop?

A. It has to be signed before because we do not type these until these are signed. The girls have instructions

not to type any of these routings until the signatures
1421 appear.

Q. Have you ever been personally present or a party to any of these so-called routing sheets?

A. Many times, yes.

Q. Of your personal knowledge are the foremen and general foremen present while these matters are being discussed?

A. Always, as far as I have ever been in it.

Q. Have you ever personally discussed the matters with foremen and general foremen who might be called upon to manufacture the part?

A. Yes, I have.

Q. Have you asked them for their suggestions?

A. Definitely.

Q. As a matter of fact, if a foreman of a certain department is going to do an operation on a part such as this, it would be advisable, wouldn't it, just as it is good business, to call him in and find out if he could work it out in that manner?

A. If we didn't there would be a continual round of argument between the process men and he. If he never signed it he would never agree to it. As a matter of course we always ask them to sign it.

Q. Now you come to sheet No. 3, is that another operation on this particular piece of stock?

1422 A. In this particular sheet it is operation No. 10 and it is the details of the tools used on operation No. 10. In other words, sheet No. 2 describes the operations to be performed with no tools shown, and sheets 3, 4, 5 and 6 and up to the first half of sheet No. 6 show the tools used on operation 10, to manufacture that part.

Q. And these tools are furnished to that particular department for that purpose?

A. Yes.

Q. In the quantity necessary?

A. That quantity we show here under the set-up. We show twelve of these and twelve of those (indicating), that first position (indicating).

Q. Approximately how many tools do you have listed there as necessary for that operation?

A. Well, there are quite a few.

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Q. (By Mr. Dahling): Mr. MacAuley, are these tools that we are talking about used in the machines?

A. Yes, they are used in six spindle automatic machines which are six positions and which we use in a total of six positions and we use forty-five different tools.

1423 Q. In going over this routing sheet with people who approve it, do they also check into the type of tools that are to be used on the machines?

A. Just in general, on this particular case these tools are most of them special and will be designed later. The type of tool, they do agree on, in the manufacturing process, yes.

Q. Now the second half of sheet No. 6, I believe, is where you stopped in adding up the tools that were used for this operation 10. I notice that there is some further material on the bottom half of sheet 6, is that another operation?

A. Operation 20 comes first.

Q. What is that operation?

A. That is to remove the burrs.

Q. What do you mean by that?

A. Well, in turning it off the automatic, there is a little tip left on the end of the piece or the edge is turned up, due to the cutting tools that we use. We use the grinder to grind off the rough burrs.

Q. Does this sheet designate the type of grinder and type of machine that is used?

A. Yes, we use a Marschke grinder machine numbered DP-1678.

Q. Is the time of the operation also shown on the
1424 second half of sheet No. 2?

A. Yes, the classification is here and the classification of the man in this case is MU-119.

1425 Q. What would you call that?

A. It's a burring operation.

Q. And the time for the operation as fixed by the time

study appears on the right hand side of the sheet, the same as in connection with operation number ten?

A. Yes.

Trial Examiner Jaffee: We will take a short recess.

(A short recess was taken.)

Trial Examiner Jaffee: On the record.

Q. (By Mr. Dahling) Mr. MacAuley, you still have in your hand Company's Exhibit 29?

A. Yes, sir.

Q. I believe you finished with the operation which had to do with removing the burrs from the part, is that right?

A. That is correct.

Q. Now, what is the next operation?

A. It is the wash and dip, dip the head in rust preventive oil.

Q. That is operation number 30?

A. That is correct.

Q. The same information appears on the exhibit with respect to that operation, in general, in connection with the other operations you have described?

A. Only that in the particular case of washing this particular group of men are charged into a non-productive account in which we show no time as a productive operator.

1426

Q. What is the next operation as shown by the exhibit?

A. The next operation is inspection before it leaves the department, which happens to be in this case UDL.

Q. That sheet lists the gauges which are used in making the inspection?

A. Yes, sir.

Q. If after this route sheet is set up, a foreman decides that the process could be improved, what does he do?

A. He requests a change in the operation sheet.

Q. Does he have a regular form which he sends through on that?

A. He does.

Mr. Dahling: Will you mark this Company's Exhibit 30?

(Thereupon the document referred to was marked for identification as Company's Exhibit No. 30.)

Q. (By Mr. Dahling) I show you Company's Exhibit Number 30, and ask you if that is the form to which you have just referred?

A. Yes, sir, it is.

Q. And that is entitled, "Recommendation for tool or operation change"?

A. Yes, sir.

Q. Where would that form be signed by the foreman making the request?

1427 A. Down in the lower lefthand corner.

Q. That is a form which is in general use in the Packard Company?

A. Yes, it is.

Mr. Dahling: I offer Exhibit Number 30 in evidence.

Mr. Karasick: No objection.

Mr. Nelson: No objection.

Trial Examiner Jaffee: Received.

(The document heretofore marked for identification as Company's Exhibit No. 30 was received in evidence.)

Mr. Dahling: Will you please mark these Company's Exhibits 31, 32, 33 and 34?

(Thereupon the documents above referred to were marked for identification as Company's Exhibits 31, 32, 33 and 34.)

Q. (By Mr. Dahling) Mr. MacAuley, I show you forms which have apparently been filled in and which have been marked Company's Exhibits 31, 32, 33 and 34, and ask you what they are?

A. Exhibit 31 is a recommendation for a tool and operation change requested by A. Lynch, Department GDM, asking us to remove from operation 10 and replace in operation 240 the part of the operation of forming the 90 degree radius on the inside of the gear.

Q. Who is Mr. Lynch?

A. He is the foreman of GDM department. And on

1428 that he also requests the two changes he wants made.

This was put into effect on our change number 253121 and 2, with alterations for the layout issued on July 8, 1944.

Q. Now, I notice that these forms in the bottom lefthand corner have the words, "Requested by"?

A. That is right.

Q. And that is where the form is signed by the foreman or general foreman?

A. The foreman or general foreman requesting the change.

Q. Then just to the right of that in the next column, the next column is headed "Approved by".

A. That is where the change involves a whole lot of expense. It might have to go in, in that case, to the divisional manager and the master mechanic for approval to see whether the requested change would make a saving to justify it.

Q. If the saving is not great?

A. In these particular cases nobody's name appears but the general foreman and the foreman and the process man that made the change.

Q. Coming to the form marked Company's Exhibit 32, was that initiated by a foreman?

A. This was requested by Mr. Kimmel, in GDX.

Q. That was a request for a change in the operation?

A. It says on here, "Please change operation and
1429 tools to the way operation is now being run." In other words, the foreman in this case changed it before he had a change on the process sheet. Now he is trying to get the operation on the sheet up to the way he is performing it.

Q. What is Company's Exhibit 33, for identification?

A. That is a request by J. Miller.

Q. What is he?

A. He is a foreman in the GDC; in which he asks that a tool be added to the routing sheet MP-1007-T, a three-cornered scraper.

Q. Did that go through and was it approved?

A. It was sent through by Mr. MacDonald, of process, and says here, "The tool has been in the crib but not on the process sheet."

Q. What is the form marked Company's Exhibit 34, for identification?

A. That is a request for a change by A. Lynch.

Q. Who is Mr. Lynch?

A. He is a foreman in GDM.

Mr. Nelson: Is he a foreman or a general foreman?

The Witness: I don't know.

Trial Examiner Jaffee: By the way, you are using the word "foreman"—

The Witness: (Interposing) In general terms.

Trial Examiner Jaffee: In general terms?

1430 The Witness: Yes, sir.

Mr. Nelson: The reason I raised the point, Mr. Examiner, is because the testimony now would indicate that these may not be originated by an assistant foreman, and it would appear on the record up to now that it could be done only by a foreman or a general foreman. In other words, an assistant foreman would assist to his foreman and the foreman would originate that.

The Witness: Usually it is the foreman and the general foreman that we get these requests from.

Mr. Nelson: Oh, we will agree there might be an exception here and there on that.

Q. (By Mr. Dahling) What is requested?

A. He requested certain items be added to the routing sheet. For instance, he wanted added to operation 46 a Tampico Brush and added to operation 47 a washing operation, and add to operation 65 a Tampico Brush, and add to operation 222, to break all sharp edges and add to operation 223 an air gun on the teeth.

Q. Now, these forms, exhibits 31 to 34, inclusive, for identification, were taken from the records of the Packard Motor Car Company?

A. Yes, sir.

Q. They are a part of their permanent records?

A. Yes, sir.

1431 Mr. Nelson: Do you mind if I ask a question about each of these?

Mr. Dahling: No.

Mr. Nelson: Regarding Company's Exhibit 31, who is Mr. Gubbins?

The Witness: He would be the process man that made this change in the routing. This shows the change number.

Mr. Nelson: That is Mr. Gubbins' signature?

The Witness: Yes, sir.

Mr. Nelson: He is the process man to whom this request was referred?

The Witness: Yes, sir.

Mr. Nelson: And it became operative because he requested it?

The Witness: Yes, sir.

Mr. Nelson: Now, on exhibit 32, the signature of Mr. C. Harter appears. Who is Mr. Harter?

The Witness: Mr. Harter is a process man.

Mr. Nelson: With authority to approve the recommendation of this kind?

The Witness: He adds it to the routing sheet, yes, sir.

Mr. Nelson: On Company Exhibit 33 there is a signature of J. MacDonald over a date. Who is Mr. MacDonald?

The Witness: He is a process man.

1432 Mr. Nelson: He had authority to act on a recommendation of that kind?

The Witness: Yes, sir.

Mr. Nelson: On Company Exhibit 36, I see here a little out of place, but in red, Mr. B. Terry. Who is Mr. Terry?

The Witness: Mr. Terry is a process man.

Mr. Nelson: With authority—

The Witness: (Interposing) To add to the process sheet.

Mr. Nelson: On exhibit 31, and Exhibits 32, 33 and 34, when these exhibits are acted upon, then that is reflected in either an amendment to or a new issue of Company's Exhibit 29?

The Witness: There is a new routing sheet and a new issue number assigned to it. Whatever the last issue, there is a new issue added to indicate these changes.

Mr. Nelson: And that would apply to the department from which it came and to the department to which it went?

The Witness: Wherever the routing sheet is distributed they all get copies.

Mr. Nelson: It will go to any department that it affects?

The Witness: That is right.

Mr. Nelson: As to either tools or material?

The Witness: That is right.

1433 Mr. Nelson: No objection.

Trial Examiner Jaffee: Received.

(The documents heretofore marked for identification as Company's Exhibits 31, 32, 33 and 34 were received in evidence.)

Q. (By Mr. Dahling) In each case, however, on exhibits 31 to 34, inclusive, the recommendation was initiated by a foreman, was it not?

A. A foreman or a general foreman.

Q. I think we had gotten to the sheet that had to do with the washing operation; had we not?

A. Yes, sir.

Q. I am referring now to exhibit 29, the routing sheet. Just generally, what operation follows the washing?

A. On this one, it is inspection.

Q. Do you have a regular department for that purpose?

A. Yes, sir.

Q. They inspect this part?

A. Yes, they do.

Q. The gauges used in connection with making the inspection are shown on this sheet 7 of Exhibit 29, is that right?

A. That is correct.

Q. Then what is the next operation?

A. They shipped them to heat treat.

1434 Q. You consider the heat treat as one operation?

A. Well, there is a number of operations within that heat treat department.

Q. Can you give them to us just rapidly?

A. Well, this particular one, the first operation, is to degrease.

Q. That is to clean the part?

A. To remove the oil, the film on the part.

Q. Then what is the next operation?

A. Then to harden. After hardening, it is degreased again.

Q. When you say harden, that is done through some sort of heating process?

A. Heating and dipping in oil, then it is degreased again, then it is drawn.

Q. What do you mean by drawn?

A. Well, heated up to—set the heat and bring it back by cooling at a certain rate of speed, after which it is wheelabrated.

Q. What is that operation?

A. That's an operation equivalent to sand blasting in which they remove the scale.

Q. And the time of the operation as fixed by the time study is set forth in the same manner on this sheet number 8 as in the previous sheets that you have testified about?

1435 A. That is correct.

Q. What is the next operation?

A. Then they spot polish the piece.

Q. What is spot polishing?

A. They merely spot polish one particular spot, so they can make a Rockwell hardness test of the piece. In other words, we must remove the surface in order to obtain the correct Brinnell or Rockwell hardness test.

Q. And this particular part has to come up to specifications?

A. That is correct.

Q. And part of those specifications are that it must have a certain hardness?

A. Yes, sir.

Q. That is determined by the test that you have just spoken about?

A. That is correct.

Q. What is the next operation?

A. After which it is dipped in rust preventive oil.

Q. Then what is the next operation?

A. It is shipped to Department UDK.

Q. Then UDK continues working on this piece?

A. Yes, they do.

Q. What are their operations?

A. They grind the end face at thread end to three—

1436 Q. (Interposing) Well, just a minute, they grind the end face. That is to a certain size?

A. Yes, sir.

Q. Is that the total operation in that department?

A. Well, there is further operations in UDK.

Q. What are the further operations? Just state them generally.

A. A rough grind, a centerless grind.

Q. What does centerless grind mean?

A. It means they pass this piece through two grinding wheels, running in the opposite direction to grind this piece perfectly round. In other words, they could do it a second way, by putting this bolt on an arbor and face grinding it or OD grinding—rather, not face; centerless grinding is much faster.

Q. What other operations are there in that particular department?

A. It is shipped from there to UDA.

Q. And there are further operations there?

A. Yes, sir.

Q. Just generally, what are they?

A. They broach the head.

Q. What do you mean by that?

A. In this particular case it is similar to an operation of milling.

1437 Q. I do not know what milling means.

A. By milling we mean cutting the surface to a flat edge or area.

Q. Then what happens to the piece?

A. It remains in the same department where we drill through the complete bolt from end to end.

Q. That is the work done in one department, is it?

A. Yes, sir.

Q. And after that is done?

A. There is still done in UDA further work.

Q. What is the further work?

A. We face the head end of the bolt.

Q. It goes from there to what department?

A. To inspection again.

Q. Then after it clears that inspection?

A. It is sent to UDE, another department, where we remove the sharp edge on the point 385 diameter.

Q. In other words, you remove the sharp edge to bring it down to a certain size?

A. Yes, sir, we just ground the edge.

Q. What further work is done in that department, if any?

A. Well, the burring operation where we burr the head of the bolt in UDD.

Q. Now, when you say that is the operation in UDD, does this department do any other type of work?

1438 A. Mostly on burring and polishing, that type of work.

Q. So that people in there would be burrers and polishers, is that it?

A. They are specialists in that kind of work.

Q. And this part comes to them together with other parts of similar character for the purpose of being polished and so on?

A. Yes, sir.

Q. What happens then?

A. It is rough polished to the point 229 diameter hole and it is finish polished, then washed and dipped in rust preventive.

1439 Q. (By Mr. Dahling) Now, then, follow through after that.

A. It is inspected again in that department.

Q. Then where does it go?

A. It is shipped to the UDA Department.

Q. What do they do in that department?

A. They etch the part.

Q. When you say they etch, what do you mean by etch?

A. They mark it with an electric—in this particular case, with an electrical tool indicating the part number on the head.

Q. And I take it, it is practically completed?

A. No.

Q. What happens?

Trial Examiner Jaffee: You are not going to get off that easily, are you?

The Witness: It is sent to the ADK for semi-grind on the face—under the face of the bolt head.

(By Mr. Dahling) Is that another operation, to bring it down to specifications?

A. Yes. After that, it is drill to cotter pin holes.

Q. Is that in the same department?

A. Yes. Then we counter-sink to cotter pin holes. Then we ream to cotter pin holes. Then we center the thread end.

Q. Is this hole in the one department?

1440 A. Yes.

Q. And they do similar work on other parts?

A. Yes.

Q. With the idea that you have these departments established so that as these various parts for the automobile are made and have to have identical operations on them, you have a department, which will carry through those operations on all of the parts?

A. That is ordinarily right and true, but in this particular part, in the DUA Division, the U Division generally is what we call a miscellaneous department, where due to the short operations of the pieces we use the same machines to run a number of pieces rather than setting the machines up and running a line production in which we never change the machines. This particular department is set up to run a variety of pieces.

Q. In the other departments or some of the other departments you mean the machines would be set up so as to just work on—

A. (Interposing) The same piece?

Q. The same piece, the same job on the same piece?

A. That is right.

Q. As it came to them down the line or by means of truck?

A. That is right.

Q. Then what happens after that?

1441 A. We centerless grind it again and then we grind the thread and then we hand-file or hone the sharp edge. It is then washed and magnafluxed.

Q. What is the purpose of that operation?

A. That is to check to see whether there are any surface cracks in the bolt due to the heat treat or grinding during the process.

Q. And that is done by means of electricity?

A. Yes, it is.

Q. What is the next operation?

A. Inspection.

Q. Then it is inspected?

A. Yes. And then it is degreased and dipped in rust preventative oil and shipped to DDX, where they use the part.

Q. And that is the story of this particular part and of its manufacture?

A. That is the story of a single bolt.

Trial Examiner Jaffee: That is the story only in its highlights?

The Witness: Yes, sir.

Q. (By Mr. Dahling) In addition to the general information you gave us, these sheets show, do they not, the result of the time study and the time of each one of the operations as fixed by the study?

1442 A. Yes, sir.

Q. Except in those cases where the non-productive departments are?

A. In this particular case, being an original routing, that would not be the result of a time study, that is an estimated time on those, it is later that the time is studied.

Q. I notice that on some of the sheets there appear to be lines, crayon lines, drawn through some of the writing and some of the typewriting. What does that mean?

A. We use those sheets rather than rewrite by longhand and we take an old sheet of a similar part and cross off the tools or parts of the operations which no longer apply to this part. That is to save time, why we do that.

Q. And if you had a brand new part that you had not manufactured before, you would have to set that up complete from the beginning, however?

A. It would be all in pencil, in that case.

Q. When you say that you had inspection, is that your Company inspection?

A. That is Company inspection.

Q. This is a part for the Rolls Royce motor?

A. Yes.

Q. Does the Government inspect that at any time—I mean this part?

1443 A. The Government inspector will check, in that particular case, with our inspection, and if he is satisfied that our inspector is doing a satisfactory job and that our equipment is satisfactory, he will accept our inspection.

Trial Examiner Jaffee: That Company's Exhibit 29 which you went over, Mr. MacAuley, applies to Rolls Royce engine?

The Witness: Yes, it does.

Trial Examiner Jaffee: I say that because Mr. Dahling and I have inadvertently, in our questions, referred to an automobile—

Mr. Dahling: (Interposing) Yes, I know I did.

The Witness: I answered that on the basis that we do treat all automobile parts similar to this part. These are routings and operations which we must go through— and the same procedure in making a car and in making a simple bolt like this bolt for the Rolls Royce engine.

Q. (By Mr. Dahling) Then, just some of the detailed things are different?

A. Yes.

Q. And in the case of an aircraft engine, it is more difficult?

A. Yes.

Q. Well then, would you—

1444 A. (Interposing) We would not make a bolt for an automobile similar to that one.

Q. When you make the bolt for the automobile, you mean it does not have to go through as many operations?

A. No, sir.

Q. What is the reason for that?

A. The stress on the bolt in an automobile that we have on an aircraft engine—in other words, an aircraft engine is stressed up to the point where we develop about one horsepower for each pound of weight, where in the auto-

mobile we may add that up to ten or fifteen pounds of weight per horsepower.

Q. Consequently, the parts do not have to be as hard or as finely machined?

A. It is not finely machined or accurately machined.

Q. When you are building automobiles, you prepare the same type of routing sheets for these parts and they flow along generally the same course of procedure as set forth in Exhibit 29, except that you maintain so many operations or so many inspections, is that right?

A. That is right.

Q. Now, I believe you said that there were about 4,000 parts to the ordinary automobile?

Trial Examiner Jaffee: 4,000 different parts.

The Witness: Yes, sir.

1445 Q. (By Mr. Dahling) As to each one of these parts, would you have a routing sheet of this sort, if you were manufacturing that part in your plant?

A. Yes, and on purchased parts which we have to inspect as received, we will put out a process routing on those showing the gauges used in the inspection.

Trial Examiner Jaffee: I know now the cause of the paper shortage.

Mr. Dahling: It is helped by the Government departments.

Trial Examiner Jaffee: They run neck in neck.

Mr. Dahling: I do not like the policy of the Government in using both sides of the page.

Q. (By Mr. Dahling) Mr. MacAuley, referring again to Company's Exhibit 29, I believe you have already testified, but I want to be sure of it, that when you come to a model change in a car, you might have to make extensive changes in the routing sheets covering the part in that car?

A. Yes.

Q. And that was particularly true, wasn't it, when you set up the small car department?

A. When we set up the small car production, it required a complete set of new routing and every part had to be re-processed.

Q. Then, as you changed your models, it was not
1446 necessary to change all of them but some of the designs being changed, you had to set up new routing sheets again?

A. Any time any dimension on any given part is changed, we have to change the routing sheet reflecting that change.

Q. Based upon your personal experience, when changes of that character are made, are they ever referred or discussed with the foreman?

A. Very definitely. I do not know of any time—at least, they have been very few, if there are any—when they are not discussed, because the process man has to make the change and he and the foreman and the general foreman and the division manager and working together almost all the time.

Q. And you have personal knowledge of the fact that that is done?

A. Yes.

Q. And have you yourself, in connection with these routing sheets, discussed matters involved and problems involved in connection with routing sheets with foremen and general foremen?

A. I would never sign a routing when I was a division manager unless the general foreman's and foreman's name was on it ahead of me. I wanted to be sure that he had seen it and agreed to it.

Q. And you had been a division manager?

1447 A. Yes; at Pontiac and Packard.

Q. And the same situation you are testifying to would apply to both Pontiac and Packard?

A. Yes.

Mr. Dahling: Mr. Examiner, I see it is four-thirty and I have an important appointment with a gentleman who is leaving town tonight. I wonder if it would be possible at this time to adjourn? I would consider it a great favor if you would grant the request.

Trial Examiner Jaffee: Very well. You have also indicated it to me off the record, Mr. Dahling. Since it appears that we cannot finish this case by tomorrow and

since Mr. Donovan indicated no anxiety about sitting tomorrow and since next Monday is New Year's Day, we will recess at this time until next Tuesday, January 2, 1945, in Judge Picard's old courtroom on the northeast corner of the eight floor at 9:30 A. M. I wish you gentlemen a happy new year.

(Whereupon, at 4:30 o'clock P. M., Friday, December 29, 1944, the hearing was adjourned until Tuesday, January 2, 1945, at 9:30 o'clock A. M.)

1448

Room 857, Federal Building,
Detroit, Michigan,
Tuesday, January 2, 1945.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 A. M.

Before:

Samuel H. Jaffee, Trial Examiner.

1450

PROCEEDINGS.

Trial Examiner Jaffee: Are we ready to proceed, gentlemen?

MORTIMER F. MACAULAY

resumed the stand, was examined and testified further as follows:

Direct Examination (Continued).

Q. (By Mr. Dahling) Mr. Macaulay, the preparation of the routing sheets for the various parts of the automobiles in peacetime and for the products you are presently producing, in the manner you have testified that Exhibit 29 was prepared, is standard practice at the Packard Motor Car Company?

A. Yes, it is.

Q. And once that routing sheet has been prepared and approved, must that be followed by the foreman?

A. Once a routing sheet is prepared and approved and

typed and sent to the shop it becomes the official "Bible," as we call it, for the whole manufacturing division.

Q. And that would be not only for the foreman but also the superintendents and assistant division managers and division managers and so on up?

A. Everybody, including the divisional manager, is supposed to follow that routing or ask for a change in it.

Q. And those changes, of course, could be suggested
1451 by any one of the managerial staff?

A. That is correct.

Q. And that would start with the foreman and go on up through the division manager?

A. That is right.

Q. I presume in case of an emergency they could temporarily make a change, if that was required?

A. In case of an emergency they do divert from the routing, but they cannot continue because if they did we would not have the tools available for them.

Q. As I understand the process men in the first place will make up this routing sheet after various conferences, is that true?

A. That is right, he makes what we call a recommended process.

Q. Then what follows?

A. He takes the routing and goes over it with supervision, at which time they can concur with the process men and approve it, and if they do not approve it he changes it so that finally an approved routing is ready for typing.

Q. Where does the foreman appear in this particular picture?

A. He approves it with the other supervisors that are affected.

Q. Now, does it happen at times, Mr. MacAuley, that
1452 changes in tools or various apparatus which may be used will be requested?

A. Why, when it comes to tools and non-productive supplies, such as oils, compounds, or other things that are used in connection with the operation—at times, the original specification will not do the job satisfactorily

and the foreman does have the right and does request that a trial run be made on different tools or different oils.

Q. Is that request presented in writing?

A. Yes.

Q. Do you have any of the forms used in that connection?

A. Why, there are some here, yes, some on gloves, some on files. This is a honing compound (indicating).

Mr. Dahling: Will you mark these documents Company's Exhibits 35, 36, 37, 38, 39, 40 and 41?

(The documents referred to were marked for identification as Company's Exhibits Nos. 35 to 41, inclusive.)

Q. (By Mr. Dahling) Mr. MacAuley, I show you papers marked for identification as Company's Exhibits 35 through 41, inclusive, and ask you what they are? Just generally, in the first place, what are they?

A. These reports—they represent requests for test material, the original in pencil, followed by a report of the trial test in pencil, which was made in various departments on various materials, with the typed sheet,

1453 the top sheet typed, a copy of the report.

Q. Who makes these requests, Mr. Macaulay?

A. The request for the test can come from various sources, many of which we receive from the foremen themselves, some are received from the purchasing department and some from the metallurgical department.

Q. Are these papers, which are designated as Company's Exhibits 35 to 41, part of the records of the Packard Motor Car Company?

A. Yes, they are.

Q. Will you start in with Exhibit 35, the first exhibit, and tell us what it is?

A. Exhibit 35 is a request for a test made by E. Regul, department foreman, in which he wanted to try out some taps. This test was run on a number of different size taps, a list of which is attached and a copy of the Foreman's report is attached, signed by Edward Regul. The test was conducted by Winfield and H. Papke. The test was approved by the foreman, Edward Regul. It was also approved by the divisional manager, G. Deislinger.

Q. When you say the test was approved, do you mean they approved the use of the new taps?

A. They approved the result of the test. In other words, in this particular case his report is that, "These taps have been tried and have worked fairly satisfactory. A
1454 complete analysis and recommendation establishing the correct taps for all operations will be issued at the completion of the investigation."

Trial Examiner Jaffee: That is something you just read from the exhibit?

The Witness: That is correct.

Q. (By Mr. Dahling) That is the report of the foreman as it appears on the exhibit?

A. Yes, sir.

Q. Now, Mr. MacAuley, that last Company exhibit—no, take the next one, Company Exhibit number 36, and just tell us what was tested in that case?

A. In the particular case the test was conducted by foreman Smith, the department foreman.

Q. Yes, but what was tested, was that an oil?

A. This was to check a honing compound.

Q. And the request was made by whom?

A. The test was evidently made by the purchasing department.

Q. Coming to Company's Exhibit 37, what does that request cover?

A. This request covers a test on a double cut taper file and the test was requested by the department foreman, Charlie Naas.

Q. Company Exhibit 38, who made that request?

1455 A. The request is signed by William Rogers and was a test made on aluminum flux.

Q. Who is Mr. Rogers?

A. He is a foreman in the B. A. Department.

Q. When you say it is a test on aluminum flux, what would that mean? What do you use a flux for?

A. It is a material we use in melting aluminum.

Q. Company's Exhibit 39, who made the request there?

A. The request is made by Otto Beyer, department foreman in the YBD Department.

Q. What did he desire to have tested?

A. He was checking on gloves.

Q. And Company Exhibit C-40, who made that request?

A. That was made by Mr. Fuller, who is the departmental foreman in the "E" division.

Q. What did he desire tested?

A. He was checking "Eyegard" shields. That is a trade name.

Q. E-y-e-g-a-r-d, Eyegard is a trade name for shields? What type of shields?

A. It is for the protection of the eyes in the forging shop.

Q. Company's Exhibit 41, who made that request?

A. That request was made by the purchasing department because of the War Production Board Conservation
1456 Order Number M-106, which restricted the use of shellac. The test was made by A. Bede.

Q. Who is Mr. A. Bede?

A. He is the carpenter foreman in the plant engineering department.

Mr. Dahling: I offer Company's Exhibits 35 to 41, inclusive, in evidence.

Mr. Nelson: No objection to the exhibit on our part.

Trial Examiner Jaffee: Is there any objection to the exhibits, gentlemen?

Mr. Karasick: I have not finished them yet, Mr. Examiner.

Mr. Nelson: Can we speak off the record for a moment?

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record. Company's Exhibits 35 through 41 are received in evidence.

(The documents heretofore marked for identification as Company's Exhibits 35 through 41 were received in evidence.)

Mr. Dahling: Would you care to look at the exhibits, Mr. Examiner?

Trial Examiner Jaffee: Later.

Q. (By Mr. Dahling) Mr. Macaulay, I believe you stated that the report of the test appears as one of the papers in each one of these exhibits?

1457 A. Yes, it does. The report of the test is usually the last sheet in this particular bunch.

Q. And where the test has been made by a foreman, does he sign this report?

A. If it hasn't been made by him, he concurs with the test and agrees that it is satisfactory or unsatisfactory.

Q. These exhibits, Company's Exhibits 35 through 41, inclusive, are samples of these requests for tests?

A. That is correct.

Q. You have others in your file?

A. We have a number of those, yes.

Q. That is the same situation with respect to Company's Exhibits 31 to 34, inclusive, in connection with recommendations for tool or operation changes?

A. That is correct.

Q. Those exhibits are samples and you have others in your files?

A. That is right.

Q. These materials that are tested, do they come from various manufacturers?

A. Manufacturers all around the country.

Q. Would the source of the material appear on the article or would that be made known to the person making the test?

A. They always know where it comes from, because if it is a tool it usually has the Company's trademark
1458 on it; if it is a compound or oil, the drums are so marked.

Q. I notice in one of these Company exhibits, Exhibit Number 40, it appears that the test was made of a goggle or shield with the trade name of "Monogoggle" manufactured by the American Allsafe Company, Incorporated?

A. That's right.

Q. The same information with respect to other products would likewise appear on these requests?

A. The foreman gets a copy out of the report showing from whom it was received so he can fill out the necessary information.

Q. Now, Mr. MacAuley, what are the different managerial levels at the Packard Motor Car Company, starting with, we will say, the president?

A. Well, immediately next to the president would be the vice-presidents.

Q. Do you have an executive vice-president at the present time?

A. Yes, we do.

Q. That is Mr. James Marks?

A. That is correct.

Q. The next in line would be the vice-presidents?

A. We have a vice-president of engineering—

Trial Examiner Jaffee: (Interposing) Just answer the question, please; we will get along much faster.

1459 The Witness: Okay. We have other vice-presidents.

Q. (By Mr. Dahling) Who are these other vice-presidents?

A. Vice-president of engineering, vice-president in charge of sales, vice-president of manufacturing, a comptroller.

Trial Examiner Jaffee: Have you finished the vice-presidents?

The Witness: No, there is a vice-president in charge of Mr. Tibbetts—I don't know.

Q. (By Mr. Dahling) He is patent counsel, is he not?

A. That is correct.

Q. What is the next level below your vice-presidents?

Trial Examiner Jaffee: Just a moment, off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Mr. Dahling: Will you read the last question?

(Question read.)

The Witness: Do you want to go to manufacturing?

Q. (By Mr. Dahling) Confine yourself to the manufacturing department. As I understand it, the vast bulk of your foremen who are designated on the petition in this case are in the manufacturing departments, both productive and nonproductive. To save time, will you confine yourself to those particular departments, Mr. MacAuley?

A. Next to vice-president of manufacturing is the
1460 manager; next to the manager is an assistant manager and under the assistant manager we have a manager of the G Division.

Q. Just so this is clear, when you say next under the

vice-president of manufacturing comes the manager, will you tell us the manager of what?

A. The aircraft division.

Q. That would be what we have termed one of the large divisions?

A. This is just typical of another division.

Q. You would also have the manager over your car and marine division?

A. That is right.

Q. Then under these managers of the two main divisions, you also have a manager of the smaller divisions, is that right?

A. Yes, sir.

Q. The smaller divisions, into which these large divisions have been broken?

A. That is right.

Q. Do you also have assistant managers?

A. In the small divisions?

Q. Yes, in the small divisions?

A. Yes, we do.

Q. What is your next level below your assistant division managers?

1461 A. We have a few cases where there are superintendents.

Q. They would fall in next below your assistant division managers?

A. That's right.

Q. When I say assistant division managers, am I correct that these division managers operate and supervise in the smaller divisions into which your two large divisions have been broken up?

A. They are what we might call sub-divisions of the main divisions.

Q. Then, below the superintendent, what is the next level?

A. The general foreman.

Q. Below the general foreman is the foreman?

A. The foreman and the assistant foreman.

Q. Below the assistant foreman you go to the rank and file?

A. Well, you have leaders and job setters and then what you might call the rank and file.

Q. What is a leader?

A. He is a productive operator in a department, who instructs new men as generally in a small group and is responsible to his assistant foreman as need be. That is a productive worker.

Q. He is a member of the CIO insofar as the Packard Motor Car Company is concerned?

1462 A. Yes, he is.

Q. You spoke of a job setter. What is a job setter?

A. Also a productive operator in a department, who sets up the various machines, and in some cases, particularly where we have women operators, do the dressing of the wheels.

Q. Is the job setter among those who are included in the UAW Union?

A. Job setters are included in the UAW and are members.

Q. And your contract covers job setters?

A. That is right.

Q. That has not been true at all times, has it?

A. No, that was changed from originally when they were not included.

Q. Let's start back up the line again, Mr. MacAuley, with, we will say, your superintendents. Over what do these superintendents have jurisdiction?

A. The superintendent is usually a man who has jurisdiction over a number of departments.

Q. Now, I believe that there is testimony that there are approximately 300 departments in the Packard Motor Car Company?

A. That is approximately right.

Q. And the superintendent would have jurisdiction over a number of these departments?

1463 A. That is right.

Q. Some superintendents would have jurisdiction over more and others would not have so many, is that right?

A. That is right.

Q. What is their particular function? That is, I am referring to the superintendents now?

A. They assist in a sense—they are assistants to the divisional manager or to the assistant divisional manager and they supervise and consult with the general foreman as to his problems.

Q. And if they have problems, with whom do they consult?

A. Superintendents?

Q. Superintendent.

A. He will consult with the assistant divisional manager or the divisional manager.

Q. I believe you testified that they may in that sense supervise a number of departments?

A. That is right.

Q. Next above is the assistant divisional manager of a small division—

Mr. Nelson: (Interposing) How many superintendents are there?

The Witness: As far as I know in the aircraft—

Mr. Nelson: (Interposing) In the plant?

Mr. Dahling: That figure can be arrived at from the

1464 charts.

Mr. Nelson: Maybe he could tell us.

The Witness: I do not know offhand, Mr. Nelson.

Mr. Nelson: Mr. Examiner, I thought we could get the number of superintendents, assistant division superintendents and division managers and assistant division managers.

Mr. Dahling: That appears in the chart covering the manufacturing division. I intended that to be the source of my computations. I have not actually counted them.

Mr. Nelson: We do not have the charts.

Trial Examiner Jaffee: Let's go ahead, gentlemen.

Q. (By Mr. Dahling) I believe you are now going to tell us about the assistant manager of a division. What is his jurisdiction?

A. His jurisdiction is that he supervises and consults, if there are any superintendents in that division or he consults with the general foreman as to his problems.

Q. Now, the assistant division manager would supervise a number of departments?

A. That is right.

Q. And would the number of departments exceed those over which you had a superintendent?

A. Usually it does.

Q. Your next in line then is your division manager?

A. That is right.

1465 Q. What is his jurisdiction?

A. He has jurisdiction over the whole division which may consist of a number of departments under which he has general foremen and foremen and possibly assistant foremen.

Q. And he, of course, is responsible for the work?

A. Of that division, yes.

Q. Of that particular division?

A. Yes.

Trial Examiner Jaffee: When you say may consist of a number of departments, are there any cases where it does not?

The Witness: In some cases like the F and K we do not have many departments. Those are large departments, but usually we break our departments down so that there are usually in a division a number of departments.

Trial Examiner Jaffee: Are there any cases where a single department constitutes one division?

The Witness: In manufacturing?

Trial Examiner Jaffee: Yes.

The Witness: I don't know of any offhand.

Q. (By Mr. Dahling) If there are, would they show in the charts placed in evidence?

A. They would show in the charts. I do not know of any.

Q. In the manufacturing and productive division above your division manager, who would then come? Your vice-president?

1466 A. Above your divisional manager comes your assistant factory manager or factory manager.

Q. When you say the factory manager, is there more than one?

A. There is in the aircraft one and in the car division one.

Q. Who is the factory manager in the aircraft division?

A. Mr. Brown.

Q. And in the car and marine?

A. Mr. Reifel.

Q. Do they have assistants?

A. Mr. Brown has an assistant. Mr. Reifel does not.

Q. Then above these factory managers would come the vice-president in charge of manufacturing?

A. Yes.

Q. And above the vice-president in charge of manufacturing would come the president?

A. The executive vice-president and the president.

Q. A number of these division managers, superintendents, were originally foremen, were they not?

A. As far as I know, every one of them has been at one time. I do not know of any exceptions right now.

Q. Mr. Christopher is the president of the Company?

A. Yes, he is.

Q. Was he at one time a foreman?

1467 A. At Delco, at one time.

Q. How about your factory managers that you have named?

A. I don't know too much about Mr. Brown but Mr. Reifel was at one time, way back in the experimental days; later he was superintendent of the experimental department.

Q. When you get down to your division manager and assistant division manager and superintendents, you would say that the majority of them are?

A. I do not know of any case that a divisional manager has not been a foreman at one time.

Q. How about your assistant divisional managers?

A. The same applies.

Q. And that applies also to superintendents?

A. The same thing.

Q. Now, coming down the ladder again to the foreman level, I wish you would tell us, Mr. MacAuley, just what

are the powers, duties and responsibilities of the foreman from the viewpoint of the Packard Motor Car Company? In that connection you may use any notes you may have prepared.

A. Well, I have listed the different responsibilities, and I can go over them.

Q. Would you go over those different responsibilities and tell us about them?

A. First—

Trial Examiner Jaffee: (Interposing) I think the
1468 witness ought to indicate what he is reading from or looking at.

Mr. Dahling: Mr. MacAuley, you are reading from a paper at the present time?

The Witness: I am reading from a set of notes I made myself.

Mr. Dahling: Those were made by you personally?

The Witness: Yes, they were.

Q. (By Mr. Dahling) I didn't consult with you about them?

A. No, sir.

Q. And you are using that for the purpose of refreshing your recollection so that you will give the full story?

A. That is right. There are so many responsibilities that I listed them out and had them typed out so that I would have them.

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Q. (By Mr. Dahling) Mr. MacAuley, did you prepare an analysis of what you believe is a foreman's job?

A. Yes, I did.

Q. And did you list in there what, in your opinion, are his duties?

A. I did.

1469 Q. And his responsibilities?

A. Yes, sir.

Q. And his authority?

A. Well, I wouldn't say that the authority is outlined

in detail, but he has to have authority to complete the responsibilities as shown here.

Q. In your opinion, from your experience, does he have that authority?

A. Yes, he has.

Q. This analysis that you prepared was prepared, based upon your experience in the manufacturing of automobiles, and at the present time, war production?

A. Yes, it is.

Q. Do the various duties and responsibilities which you have listed on your analysis of the foreman's job—strike that. Do you, based upon experience, have foremen who actually and substantially carry out these duties and responsibilities?

A. We have.

Q. If you did not have foremen or assistant foremen who substantially carried out these duties and responsibilities, what effect would it have upon your production?

A. Well, production would be limited, it would be very costly and we would have considerable labor trouble and considerable trouble amongst themselves.

1470 Q. In other words, the level of foreman is an important level in the operation, in the running of the Packard Motor Car Company?

A. Definitely.

Mr. Dahling: Mr. Examiner, I have this analysis of a foreman's job concerning which Mr. MacAuley has testified, consisting of five sheets. In a discussion off the record, I believe that it was agreeable that that might be copied into the record rather than have Mr. MacAuley testify as to each particular item?

Mr. Nelson: That is agreeable with me.

Mr. Karasick: I will agree to that also.

Trial Examiner Jaffee: Very well, the material just referred to may be copied by the Reporter and it will follow at this point in the record.

"Analysis of a Foreman's Job

"He has responsibilities to the Management, to the Workers and is responsible for Material and Equipment.

1. Representative of management to the worker
   (a) Interprets policies to the workers
   (b) Develops and maintains morale

a. Policies regarding Welfare, Safety, Adjusting Grievances, Wages, Promotions, Organization Functions, etc.

1471 b. Develops and maintains morale by maintaining discipline, placing right man on right job, adjust complaints or sees that action is taken—see that workers are placed on correct classification—Take a personal interest in worker—know the men by name—plan work to keep a steady flow of work in department—adjust problems arising between workers themselves—carefully train workers on the job—encourage workers to do their best—know and see that workers are promoted and transferred on ability.

2. He is responsible to Management for Production.
   a. Plan work according to schedule
   b. Get production out on schedule
   c. See that operations and processes are performed according to routings
   d. See that proper number of people are placed on the job
   e. Suggest improvements in operations or processes
   f. See that material is available
   g. See that material completed is accounted for and moved

3. Responsible to Management to maintain quality.
   a. Sees that parts are made to standard specifications
1472 b. Sees that process is such as to maintain quality
   c. Checks with inspection to see that quality is maintained

4. Responsible to Management for the Control of Costs.
   a. By the proper selection and placement of workers
   b. Proper training of employees

c. By maintaining proper working conditions
d. By seeing that tools and fixtures are maintained
e. By seeing that machines are maintained
f. See that plant is kept cleaned
g. Eliminate scrap
h. Proper usage of tools and expense materials
i. Avoid unnecessary help
j. See that right amount and type of machines are used.

5. Responsible to Management to make Records and Reports.

a. Time exception reports
b. Employment record cards
c. Trouble reports
d. Shortage reports.
e. Labor requisitions
f. Progress reports

Responsibility to Workers

1. Responsibility to Workers to fit Worker to the job and instruct Worker.

1473 a. Analyze the requirements of the job to be assigned a worker
b. Give employment as much information as possible as to the qualifications required
c. Introduce the worker to the job
e. Use the men he has if possible
f. Show patience as an instructor
g. Either take responsibility of instructing himself or delegate someone else
h. Demonstrate the job step by step
f. Insist on accuracy before speed
j. Follow up instructions and make corrections

2. Responsibility to workers to maintain discipline.
   a. Set a good example
   b. Be impartial
   c. Deal directly with the individual and the steward if necessary
   d. Maintain uniform discipline standards

3. Responsibility to workers to secure cooperation.
   a. Show interest in the employees
   b. Show confidence in his men
   c. Develop team spirit among his men
   d. Show appreciation for the efforts

4. Responsible to maintain cleanliness and order.
   a. Require workers to keep machines, floors and
1474 benches clean
   b. See that proper containers for waste are provided
   c. Arrange for orderly stock piling
   d. See that aisles are kept clear
   e. Make workers feel responsible for cleanliness

5. Responsible to secure and use suggestions from the workers.
   a. Encourage operators to make suggestions
   b. Give operator credit for his suggestions
   c. Follow up suggestions accepted and see that they are adopted.

6. Responsible to see that workers are rated.
   a. Does he do good work
   b. Does he do his share
   c. Is he a clean, safe and orderly worker
   d. Is his attendance regular
   e. Does he work well with others
   f. Does he follow instructions
   g. Does he work from starting to stopping time

7. Responsible to worker to see right employee is recommended for promotion or transfer.
   a. Does not make promises not possible to be accomplished
   b. Show no favoritism
8. Represent the workers view to management.

1475 a. As to working conditions
   b. As to rates
   c. All grievances
   d. Then see that action is taken

Responsibility for Material & Equipment

1. Handling material and equipment.
   a. Receives material from various departments
   b. See that it is properly stored
   c. Check shortages
   d. Supervises unloading
   e. Report shortages
   f. See that proper containers are used between operations
   g. Maintain a steady flow
2. Maintain equipment and tools
   a. Instruct employees in care and use of tools
   b. See that proper tools are used
   c. See that defective tools and equipment are replaced
   d. Report all conditions requiring attention promptly

Responsibility to Himself

   a. See that he leads instead of driving
   b. Avoid being authoritative or belligerent
   c. Avoid assuming unwarranted authority

1476 d. Be cooperative with all other departments
   e. Be willing to call for specialized advice where needed from the various service divisions; such

as, Industrial Relations, Mechanical, Plant Engineering, Time Study, Metallurgical, Material Control, Accounting, etc.

M. F. Macaulay – a
12-15-44"

Q. (By Mr. Dahling) Mr. MacAuley, a foreman, above all things, I suppose, must be a good leader?

A. That is right.

Q. He must have patience?

A. That is correct.

Q. And use good judgment?

A. He certainly must.

Q. He, of course, would be the first man who would know certain operations which were provided for on the routing sheet did not work out well in practice, would he not?

A. Yes.

Q. I believe you have included in your list of his duties that it would be his duty, then, to report those matters to his superintendent, if he had a superintendent, or to the assistant manager, if he had no superintendent?

A. Oftentimes he doesn't report—he immediately.

1477 contacts the process man himself or the tool engineer, whatever he is having trouble with, and gets that man down there to help him; it might be inspection, a process man, a tool man or it might be a metallurgic process. Oftentimes, he calls that help in himself.

1478 Q. (By Mr. Dahling): And based upon your experience that is actually done by the foreman?

A. Yes, it is.

Q. Now, I believe, Mr. MacAuley, you were division manager at one time, were you not?

A. Yes, I was.

Q. What division did you manage?

A. I managed the small car division or 120 division.

Q. Approximately how many departments were in that division?

A. I would say about twenty-five.

Q. Would you remember offhand how many foremen you might have had in the division

A. I don't remember offhand. I would have to recheck that.

Q. Well, there would be foremen in each one of these departments, I presume?

A. That is right.

Q. Who was directly under you in connection with the supervision of this division?

A. I had two people, one in charge of the chassis and motor and I had another man in charge of all bodies.

Q. What title did they bear?

A. They were superintendents.

Q. And did you also have under the superintendents
1479 the general foremen—

A. General foremen and foremen and assistant foremen.

Q. Now, in connection with this analysis that you have made and which is now a part of the record, was that prepared based upon your personal experience as a division manager?

A. That was prepared from experiences I have had over a number of years dealing with foremen, the things I held them responsible for and the way we always operated, as far as I was concerned.

Q. And based upon your experience, if a general foreman or a foreman makes a recommendation, how is that considered by the superintendent or as in your case, the division manager, if it got up to you?

A. Well, almost invariably we went along with them unless we definitely could see something wrong with the recommendation and we told them why we did not agree with them.

Q. What might be some of the reasons you would not agree with the general foreman's recommendation?

A. Well, we might know that the expense of the recommendation was far greater than the saving to be made, over a period of time. We may have had advance information that a particular part was going to be
1480 obsoleted and that the cost of the change would be greater than the saving made over a few pieces.

Q. Furthermore, of course, you would have to bear in

mind the operations of the entire division while the foreman would be interested in his department?

A. That is, his department, yes.

Q. Now, then, just to particularize a little more, take your position as division foreman—pardon me, division manager—and state what your duties and responsibilities were in that position.

A. My responsibilities were to see that all the general foremen were working under the same conditions and that they were treating their people alike and were working together in coordinating their efforts.

Q. And you were responsible of course, were you not, to get out production in the division?

A. Yes.

Q. You, of course, had to keep the costs down?

A. That is right.

Q. Would you say that you generally had to run that division as if it was more or less a separate shop and approximately the same as a man would if he had his business and conducted that business on the outside?

A. We ran the whole division just as though it was
1481 one big department, as far as I was concerned. Each individual foreman or general foreman was responsible for their individual department.

Q. And you in turn were responsible for the entire division?

A. That is right.

Q. If matters came up that you felt should be gone into by upper management, who did you contact?

A. Usually, if it would pertain to the body division we would call in the superintendent of the body division and his general foreman.

Q. That is where you were dealing with your own men?

A. Yes.

Q. Now, we will say that some matter came to you and you thought you would have to consult with higher authority in the Company, to whom would you go?

A. I would go to the vice-president of manufacturing.

Q. Did you frequently consult with your superintendents?

A. With my own superintendents?

Q. Yes, with your own superintendents?

A. I would say on the average of at least twice a week.

Q. While you were division manager were you on the floor of the plant very many times?

A. Many times.

Q. Did you ever consult with your general foreman?

1482 A. If they had a particular problem I did.

Q. And they could come to you with their problems?

A. Yes, they could.

Q. You preferred, I presume, their going through their particular superintendents first, however?

A. I asked the general foreman as a rule if I discussed anything with them, that they be sure and contact their superintendent and advise him of the decisions we reached, so that at all times he knew that we had arrived at a decision and he was not unfamiliar with it.

Q. In what sense, a broad sense, would you say that your duties and responsibilities as a division manager followed very closely or paralleled those the foreman had in his particular scope of authority?

A. I think we both had the same responsibilities. The only difference I would say, was that I had to worry over a division and he had a department. We had the same responsibilities to the management and to the workers. I had to see that he did do it.

Q. Mr. MacAuley, I presume at times the production in an automobile factory goes down?

A. That is right.

Q. Then you do not need as many men after your production has been reduced?

A. That is right.

1483 Q. And it might also mean that you would have to reduce the number of your supervisory employees?

A. That is right.

Q. Take an example of where production goes down and you will, let us say, do away with the night shift, that would mean that you would need less foremen in that particular department, would it not?

A. That is right.

Q. How do you select the foremen who are going to remain on the job?

A. We make a complete list of all the foremen we have, both day and night, and go over the list with the superintendent. It would refer to foremen and would take in the general foremen and superintendents and we would completely survey the list of day and night men. Between the general foreman and the superintendent and myself we would pick out what we consider our best men, from their production records, as to trouble with workers and their production ability, their general ability and overall ability.

Q. You say that if it was a question of which foreman you would keep on the job as a foreman, that that matter would be taken up with the superintendent and general foreman?

A. That is right.

1484 Q. And if it was a question of your having to reduce your force by not using as many general foremen, with whom would that matter be discussed?

A. I would discuss that with the superintendent. I felt after all it was his responsibility to run the job out there and I wanted him to have the men he felt best capable to do the job.

Q. Would you say that that was the general practice?

A. I think it is.

Q. I'm sorry.

A. I think it is. It is our job, after all—our jobs after all are no better than what the foremen do for us.

Q. My question was, do you think that that is the way this matter is taken care of in the Packard Company, generally?

A. I would say it has been; I haven't seen it otherwise.

Q. I think I said "Do you think." Is it to your knowledge, I should say, that this procedure is carried out in the other divisions in the same manner that you in your division worked out?

A. I discussed it with all of them and they said they were doing it the same way.

Q. You would say, in your opinion, it is a standard
1485 practice in the Packard Motor Car Company?

A. I don't see how it could be otherwise, Mr. Dahling.

Q. If you, as the head of this division, found it was necessary to transfer some of your foremen, we will say, what would you do with them? That is, you could not use them as foremen any longer because of the reduction in production and you had selected foremen whom you felt were better qualified than these others. What would you do with those men?

A. I would try to find them jobs some place else.

Q. You would transfer them to that job?

A. That is right.

Q. It might also be possible they would be transferred back to hourly rate workers, is it?

A. It is, yes.

Q. The foreman might be reduced to an assistant foreman, I assume?

A. He might be.

Q. It would be your assistant foreman who, in case of a reduction in production, would be transferred back to the rank and file, would it?

A. Usually that's the way we step it down, yes.

Q. Do you know, of your own knowledge, Mr. MacAuley, in your division did your superintendents
1486 ever have meetings with the general foremen?

A. Yes, sir, they did.

Q. In those meetings would the foremen sometimes be present?

A. Oh, yes. If there is a particular problem in that man's department, the foreman will always be there. On a general policy meeting, on general information or schedule or cutbacks, he would probably be called in by his general foreman only. Regarding a certain department, the foreman would be in there.

Q. That is the policy generally, throughout the Packard Motor Car Company?

A. Yes, sir.

Q. You feel that is essential if you are going to do a good job?

A. You have to, Mr. Dahling.

Q. Mr. MacAuley, if a foreman—we will take you back to your division again—if your division decided a man is incompetent and sends through a query asking that this man be cleared from the rolls, and, we will say, the steward agreed to that clearance, what would you as divisional manager do?

A. I would have nothing to do with it except to see that he was cleared.

1487 Q. In other words, you as the divisional manager, if the foreman felt a man was incompetent and requested his removal, would not stop the procedure?

A. No, sir. I have signed requests, Mr. Dahling, the foreman has made, but I did that merely so that I would be in constant touch with what went on in my division. In other words, it was impossible for me to be in the departments every day and I kept in touch by asking the foreman to let me sign what he sends out. That was also a protection to the foreman because I couldn't accuse him later on of doing something I didn't know anything about, because it was signed by me.

Q. You would say in your particular case if a foreman recommended a discharge of a man for incompetency, unless the Union stepped into the picture to have the trials and hearings, you would follow the recommendation of that foreman?

A. I would have to. If I didn't have confidence in my foreman, I wouldn't have him working for me.

Q. It is very important that you have foremen in whom you have confidence?

A. You have to have.

Q. You could not run a factory if the president did not have confidence in his vice-presidents, and so on down the line?

A. That is right.

1488 Q. So your feeling is that if these foremen found this particular man was not doing a good job, inasmuch as they were responsible for their end of the job, you should carry out their recommendations?

A. Definitely.

Q. Was that particularly true in peace times?

A. Sure.

Q. There was some testimony here that the man would be removed from the roll of the department but might be given a job in some other part of the plant. That happens, I suppose?

A. That happens. We find one man might get along with some foremen all right and in other cases he couldn't get along with another foreman at all. In a particular case, where a foreman would say on his query he didn't desire to have this man placed any place else in the plant, the Employment Department would not place that man in any other department.

Q. In some cases it would be just a clash of personalities, I suppose?

A. That is right.

Q. And the man might not in one department work out all right; whereas, he would work out all right in another department?

A. That is right.

1489 Mr. Dahling: Would it be possible to have a recess at this time, Mr. Examiner?

Trial Examiner Jaffee: We will take a ten-minute recess.

(A short recess was taken.)

Trial Examiner Jaffee: The hearing is in order.

Q. (By Mr. Dahling): Mr. Macaulay, in comparing this analysis of the foreman's job, duty and responsibility, is there anything particularly new in that list?

A. No. That list was a list made up that I accumulated over the years, of different subjects we discussed in our foremen training schools, both at Packard's and General Motors. It is an accumulative list I maintained.

Q. And those are the duties and responsibilities that you have listed, which are the duties and responsibilities these foremen have had over the years?

A. That is right.

Q. Mr. Macaulay, there is some testimony in the record that after the Foreman's Association of America was formed, and had their Chapter 5 at Packard's and the president and vice-president of the Chapter were pro-

moted, I believe the president's name was Lempke. Do you know anything about that promotion?

A. Yes. Mr. Lempke was promoted in the "D" Division and was under, at that time, a man by the name of
1490 Mr. Gates. Mr. Gates was eventually removed from that job and Mr. Lempke was next in line and was given his job. Then in our expansion program going from a 1400 program to a 2700 program, it was necessary to set up a separate division and expand our production. When the "C" Division was expanded Mr. Lempke was advanced to assistant divisional manager under Mr. Garvey.

Q. He was next in line for that particular job?

A. Yes, he was.

Q. Was he promoted because he happened to be president of the Foreman's Union?

A. Not a bit.

Q. The vice-president; I believe his name was Ruggles—that name has been furnished me by the Petitioner—was also promoted at about the same time, apparently, do you know anything about that promotion?

A. Yes, that was a similar case of expansion. We put in a second tear-down and build-up line in the motor room in the "K" Division and Mr. Ruggles was next in line for that job.

Q. Would you say those promotions were based upon ability and experience?

A. Yes, that is right.

Q. Did they have anything to do with the fact that these two gentlemen had happened to be president and
1491 vice-president of the Foreman's Union?

A. None whatsoever.

Q. Now, the name of Mr. Hunt was also mentioned in the testimony as having been one of the officers of the old Local 918. Is Mr. Hunt still with the Company?

A. Yes, he is.

Q. Do you know his employment history?

A. Yes, Mr. Hunt used to work for me.

Q. What happened to Mr. Hunt?

A. Well, when we discontinued car production Mr. Hunt was on the trim line at that time. Of course, there is no

trim work in the war work. Mr. Weiss called me one day and said he had a number of foremen both in the paint and trim and asked me whether I could use them. I took Mr. Hunt and put him on plant layout work.

Q. Is he still in that job at the present time?

A. Yes, he is.

Q. How does his present pay compare with what he received on his old job?

A. I would say he is getting some $50.00 more now than he did as a foreman, per month, base pay.

Q. There is also testimony in the record by Mr. Beyerley who was a spot welder, apparently, on bodies. Did you make any change in connection with your manufacture of bodies along in '40, or '41?

1492 A. Well, that was the time that we decided to buy a portion of our bodies. In other words, we formerly made all our bodies and it was decided that we would let out one of the models to the Briggs Company. We bought one of the models—

Q. And that meant you reduced your force working on the bodies?

A. The force was reduced.

Q. The force was reduced?

A. Yes.

Q. In connection with your supervision, that meant that you likewise reduced your supervision?

A. That is right.

Q. And you kept in supervision the men you thought best qualified?

A. Yes.

Q. And the others—some of them were transferred to the rank and file?

A. Yes.

Q. And they accepted those jobs, did they not?

A. Right.

Mr. Dahling: You may cross-examine.

Cross-Examination.

Q. (By Mr. Nelson): Mr. MacAuley, how long have you been at the Packard Motor Car Company?

1493 A. Slightly over ten years.

Q. In those ten years have there been and are they now any printed rules or statements of a foreman's responsibilities and duties?

A. In printed form?

Q. Yes.

A. No, sir.

Q. So that all that a foreman knows about it is his own sense of his position and what is said to him orally?

A. Only what he has covered in the school sessions we have held.

Q. Still it takes five printed pages for you to list your conception of what a foreman's duties and responsibilities are?

A. Those are discussed with him, Mr. Nelson, as the job goes on. He discusses those with the superintendent, the general foreman and the foreman. He has to have those in order to function.

Q. You are a university man, aren't you?

A. Yes.

Q. With an engineering degree?

A. Yes.

Q. There are not very many college men in the foremen's list at Packard, are there?

A. Why, I don't know any offhand, Mr. Nelson.

1494 Q. Many of them, as we note from the testimony, quit school at about the eighth grade?

A. No, that is not right.

Q. Some of them had some high school?

A. One or two years of high school and then perhaps the university.

Q. Is it true that the management group at Packard's above superintendents receive a yearly bonus?

A. Yes, they do, when there is a bonus available.

Q. I am assuming a bonus is paid.

A. To the best of my knowledge, yes, sir.

Q. Those below the rank of superintendents do not receive bonuses ordinarily?

A. Not to my knowledge.

Q. The knowledge that a part is to be declared obsolete

or to be obsoleted, as you said, is that knowledge not always conveyed down the line? Or, as a matter of fact, it is only infrequently conveyed down the line, is it not, that is, as far down as the general foreman?

A. I don't quite understand the question, Mr. Nelson. If it has been decided to obsolete that particular part, the Engineering Department will issue an alteration or change notice which the foreman gets a copy of. If there is a change on something that is considered confidential information, before the release issued, and if it is to
1495 affect a particular foreman, usually in deciding the design of the new piece the foreman is usually called in to offer his suggestions on the manufacture of that part.

Q. That is not what I am talking about. I am talking about the notifying of a man down the line. We will assume it is originated in the Engineering Department some place, say a model is to be changed or the part or the manufacture of the current model is to be changed. That would originate presumably in the Engineering Department?

A. Engineers design the part and issue the release.

Q. Well, is it not true that men are inclined to be a little less exacting of themselves and others if they know they are operating on something that is just about to be passe?

A. Not necessarily.

Q. But is there not a little tendency to be so?

A. To be careless about it?

Q. Yes, the parts not being continued, sort of like a dead horse?

A. He might make the parts just as well, but he may not want to make any more changes in his tooling.

Q. Is if not true this knowledge comes to the general foreman only shortly prior to the actual making of the change?

1496 A. No, because he had to assign the routing for the new part.

Q. As a matter of fact, does a foreman of any grade have anything to do with the kind of a car that is to be manufactured?

A. The kind of a car?

Q. Yes.

A. No, only in the manufacture of the parts, as far as his suggestions are concerned.

Q. But he is only offering suggestions for the manufacturing of a part for a certain kind of a car that somebody else has determined to make?

A. That is right.

Q. His whole capacity is to get out that part, we will say, at best, as well as he knows how and as cheaply as he knows how?

A. That is right.

Q. The same applies to tools, does it not?

A. (No response.)

Q. If he wants a tool to get out a part for a car that somebody else has determined?

A. What he does on tools, a process man recommends a group of tools to perform a particular operation. The foreman will concur with the process man and agree that that is the tool best adapted for that operation and
1497 then he has the privilege later on of running a test if it is not satisfactory.

Q. Outside of James Wilkins, do you know of any foreman of any grade who was consulted about the layout of any department in which he works?

A. Yes, I do.

Q. Who is it?

A. Mr. Kohlhal was one.

Q. What grade of foreman is he?

A. The last I knew of him, he was a general foreman.

Q. In what department?

A. Conn. rod.

Q. What did they do in his department?

A. Manufacture the connecting rod for the Rolls Royce engine.

Q. How long did that conference last?

A. In the layout?

Q. With Mr. Kohlhal, how long did the conferring on the layout of his department last?

A. About a week.

Q. You mean he gave an entire week to it?

A. He gave us about five hours a day for a week.

Q. Mr. Wilkins testified he spent some five minutes on it?

1498 A. I don't know when Mr. Wilkins saw that layout; I wasn't there.

Q. What other foreman, now, besides Mr. Kohfhal?

A. Mr. Massuch.

Q. In what department does he work?

A. He is foreman of the Polishing Department.

Q. How much of his time was taken in consulting about the layout?

A. He spent about three days of about four hours apiece with us.

Q. Any other foreman you recall, of any grade, who was consulted?

A. I can't tell you of the foremen, but Mr. Breske, of the "U" Division, has spent time with us.

Q. What department was that?

A. The U. D. A.

Q. What do they do there?

A. Miscellaneous machining operations on small parts.

Q. How much time did he spend?

A. He spent around three days, about three hours apiece.

Q. Are there any others you can recall?

A. I can't recall all the foremen, but I don't recall any layout that has not been approved and worked on

1499 by foremen.

Mr. Nelson: Do you have Exhibit 29 convenient, Mr. Dahling?

Mr. Dahling: Yes, here it is (indicating).

Q. (By Mr. Nelson): Now, it is noticeable here that on Exhibit 29, I believe the foremen signed on just one sheet?

A. That is right.

Q. I take it you mean to imply that these sheets are bound together in this manner when they go to the foremen?

A. That is right.

Q. Let us not spend a lot of time with this, but this

amounts to a written order to the foremen, does it not, Exhibit 29?

A. That amounts to this, the process man recommended that method of making the part.

Q. And the foreman is expected to carry out that method?

A. The foreman agrees he can do it that way and recommends we make it that way.

Q. Suppose he refuses and says no?

A. Then a meeting is called between he and his divisional manager, the process man and the master mechanic, all four of them will sit down and discuss it.

Q. Well, suppose he still says no?

A. Well, he will have to have a good reason for saying no.

1500

Q. He may have what seems to him to be a good reason?

A. If his divisional manager backs him up, then the master mechanic will have to make a change there.

Q. Suppose the divisional manager does not back him up?

A. In that case there is three against one.

Q. And the majority, I suppose, rules?

A. Yes, sir.

Q. So he either has to do it or get out?

A. That is right, he has to have a good reason, though.

Q. Who is the judge of what is a good reason? Somebody besides the foreman, is it not?

A. Well, if three other people believe he is wrong, I don't think a foreman would stick very long on that.

Q. He would not stick at all; he would have to step aside?

A. He would have to step aside or do it.

Q. So measuring his practical experience against the abstract theories of other men who are not at the machine, if three of them go against him, he steps away?

A. Those three men have the equivalent of more experience than he.

Q. But he is one of the four who at that particular time is in contact with the men, machines and material, is he not?

1501 A. Those three men have the equivalent or more experience than he.

Q. But he is one of the four who at that particular time is in contact with the men, machines and material, is he not?

A. That is right.

Q. This paper comes to him with all of the other signatures on it, does it not, Exhibit 29?

A. No, he signs it before the divisional manager signs it.

Q. That is brought to him with everything on it except the signatures?

A. Yes, sir.

Q. And he is asked to look it over and sign it?

A. That is right.

Q. Ordinarily he does so, doesn't he?

A. Almost invariably he does, unless there is some particular operation he disagrees with.

Q. Then it is signed and sent back to him and he is expected to produce according to that layout?

A. That is right.

Mr. Nelson: May I have Exhibits 35 to 41, please?

Mr. Dahling: Yes.

Q. (By Mr. Nelson): With respect to Exhibits 35 to 41, both inclusive, the first page appears to be a type-
1502 written page in each case?

A. Yes.

Q. And apparently is made up somewhere besides in the Foreman's office?

A. That is right.

Q. It is a standard form sheet, apparently?

A. Yes.

Q. So, the foreman has no responsibility for what appears on the first page?

A. That is a copy of the sheet in longhand—of the last sheet, which is in longhand. The typed sheet is a copy of the penciled sheet.

Q. We are just taking Exhibit 39. Taking this basic sheet here which is the bottom sheet, the discussion appears to be in two handwritings, doesn't it, neither one of which appears to be in the handwriting of the foreman?

A. I would say the top part is in the handwriting of the foreman, Mr. Nelson, as near as I can tell.

Q. You couldn't be very sure of that, could you?

A. No, I am not a handwriting expert. I don't know for sure.

Q. What I am getting at is as I look these over—will you tell me whether that discussion in any of these Exhibits 35 to 41, is in the handwriting of the foreman
1503 whose name appears, as you would say? You have passed on Exhibit 39.

A. Well, I would say this one is definitely in the handwriting of the foreman.

Q. That is Exhibit 37, you say that is in the handwriting of Nass?

A. That is in Charlie Nass' handwriting.

Q. I suggest that it is not, if you want my opinion on it. I will hand it to the Examiner for examination.

A. This one I do not know whether it is in Mr. Rogers' handwriting and signature or not.

Q. Exhibit 38, you would not say that that was William Rogers' handwriting?

A. I couldn't say for sure.

Q. The second part certainly is not?

A. That is true?

Q. It is not?

A. Yes.

Q. On Exhibit 38 the original remarks are erased for some reason and there is writing over it. It was not satisfactory and there has been an erasure on the whole line, hasn't there?

A. I wouldn't say that for sure, that looks like ditto ink underneath there. It is just the same as that
1504 was (indicating), and not erased.

Q. Wasn't it?

A. No.

Q. There is a good deal of erasure on that?

A. Yes.

Q. And you say it is ditto ink?

Trial Examiner Jaffee: You mean that much? (indicating).

The Witness: Yes.

Q. (By Mr. Nelson): That smudge of carbon is a smudge instead of an erasure? Well, then, you would not say that the second part is in Mr. Rogers' handwriting?

A. That is clearly Mr. Bellamy's handwriting.

Q. The supervisor of materials specialist department?

A. Yes.

Q. The first part you cannot say is in Mr. Rogers' handwriting, either, can you? "Not satisfactory," beginning there?

A. I am not sure, but it looks to me as though it is.

Q. Coming back to Exhibit 39 for a moment, can we not agree that the bottom three lines and remarks are in Mr. Bellamy's handwriting again?

A. Yes.

Q. Clearly so?

A. Yes.

1505 Q. And the remarks above, would you say that is in the handwriting of Otto Beverley?

A. I would say so.

Q. I will pass it to the Examiner for him to determine. Now you have which one?

A. Forty.

Q. Exhibit 40?

A. Yes.

Trial Examiner Jaffee: I might say while you are examining 40, Mr. Nelson, so far as Company's Exhibit 38 is concerned, with particular reference to the part which might possibly have been erased or smudged, I would say at the moment that it is a smudge.

Mr. Nelson: I am inclined to think so, now in holding it up to the light. It is a smudge of purple carbon.

Q. (By Mr. Nelson): Let me ask you pointblank, Mr. MacAuley, what is this man's name?

A. Nathan B. Fuller?

Q. Yes. What test was conducted by Mr. Fuller?

A. He is a foreman in the department.

Q. Isn't that remark there Mr. Fuller's handwriting?

A. I think they are Fuller's or Guy's. Mr. Fuller is a department foreman.

1506 Q. He is a department foreman?

A. Yes.

Q. Isn't Mr. Bellamy's handwriting there?

A. No.

Q. How about that one?

A. Daschke? I would say it was his handwriting.

Q. You cannot make up your mind between Fuller and Guy?

A. No.

Q. Well, I will pass that to the Examiner.

Trial Examiner Jaffee: When you use the words "department foreman," what does that mean?

The Witness: He is the foreman in charge of a department.

Trial Examiner Jaffee: Does that mean general foreman?

The Witness: Not in these cases, no, a general foreman is usually over a series of departments.

Mr. Nelson: More than one?

The Witness: That is right.

Q. (By Mr. Nelson): And that has been the testimony here that in some cases it is as low as two and in some cases as high as three and four and five?

A. That's right.

Q. Let's take Exhibit 41.

A. I would say that was written by Mr. Bede.

1507 Q. Is that his signature?

A. That is his signature.

Q. Now, Exhibit 36, who is Jederhaus? Well, on Exhibit 36 is that the handwriting of Mr. Bellamy?

A. I would not say it was Bellamy's signature.

Q. You would not say it is not, would you?

A. No, I am not sure.

Q. I didn't ask you to be sure. Isn't that Mr. Bellamy's handwriting?

A. This up here?

Q. Yes.

A. I don't know, I don't think it is.

Q. I am passing it to the Examiner. On Exhibit 35 whose handwriting are in "Remarks" there (indicating)?

A. In that particular case the handwriting is the handwriting of C. Winfield.

Q. Who is he?

A. He was the process man. It is approved by Edward Regul.

Q. Is C. Winfield—is that his signature or somebody else's writing?

A. That is his signature.

Q. The process man?

A. Yes.

1508 Q. We will pass that to the Examiner also. A moment ago you said something about a foreman sending a query through to the effect that he wanted a certain working man discharged and that word "discharge" ordinarily would mean discharged from the plant?

A. No, sir, discharged from his department.

Q. "Discharged" would mean only discharged from his department?

A. That is right.

Q. Well, let's suppose a case. Take a woman employee who has been tried in various departments and found unsatisfactory in all of them, not being willing to work, in general. Without going into all the reasons—the foreman finally says to her, "Now, Mamie, you just do not show a disposition to work and haven't done a day's work in the factory, and I am discharging you." Whereupon the woman slaps the foreman's face. The foreman then puts through a request for a discharge. What would you say, in the normal course of events, tested by what you say a foreman has power to do, should result?

Mr. Donovan: Is the question addressed to what the witness should do or what?

Mr. Nelson: What he thinks should be done under the rules laid down.

Mr. Donovan: By whom?

Mr. Nelson: By the Company.

1509 The Witness: In that case the foreman would send a query through notifying the Employment Department of all the facts in the case and in that particular case if she was tried in various departments before and had proven unsatisfactory in his department and had slapped his face, the Employment Department would see that she was thrown out of the plant.

Q. (By Mr. Nelson): Entirely?

A. Yes.

Q. Well, she wasn't and that is recent and the foreman involved is Robert Turnbull.

A. There might be cases and other reasons for it that I do not know about.

Q. Well, there would in any event be two counts against that woman, wouldn't there? One, she hadn't shown a disposition to work, presumably on the facts I stated. In any event, she had shown an affirmative disposition not to work, and the other reason is that she was unruly and violent in her attitude towards supervision?

A. In my opinion she should be fired. I don't know the other points in the case.

Q. But those two characteristics stand out on that experience?

A. As far as I am concerned, definitely.

1510 Q. She should go?

A. Yes.

Q. If your rule or rules are applicable correctly, she would have been discharged from the employ of the company?

A. Yes.

Q. By the way, while we are on the subject and without arguing the matter, that puts a foreman, with a woman who takes that kind of an attitude towards a statement concerning her work in the plant—that puts a foreman in a pretty bad spot, and a dangerous spot, is that true?

A. Yes.

Q. Because if she was untruthful as well as lazy and violent, she might have charged him with something else and put him in a dickens of a position, to put it very mildly?

A. Yes.

Q. If the foreman is to have any protection in the exercise of his authority that he is supposed to have, that would be a shining case to apply it?

A. He should see that she is taken out of his department, especially where she has been tried before, unless

they have some other reason for it—to see that she was discharged.

Q. In any event, the woman's name was Mamie.

Mr. Dahling: What was the name of the woman?

1511 Mr. Nelson: Mamie. Do you want it on the record? If you do we will give it to you on the record. Perhaps you would want to have it in private.

Mr. Donovan: When did this occur?

Mr. Nelson: About six months ago.

Q. (By Mr. Nelson): Now, perhaps we can take another example. Take a CIO steward who had been more than once found sleeping in the toilet. That is more or less common—that is a common occurrence—that is nothing unusual, is that?

A. It has happened before.

Q. And he repeated it to the point where he was discharged by the foreman. There was a query sent in recommending his discharge. Now, by the rules you have stated here, should the foreman have been retained?

A. Why, I don't know all the other facts in the case, Mr. Nelson.

Q. I gave you the facts. You have to take them as I gave them to you. If the facts are wrong my question falls flat and it will be my fault.

Mr. Donovan: I object to the questioner not giving the witness sufficient facts. Foremen witnesses have testified that foremen sometimes desire a man taken out of the plant and that owing to the influence of the CIO after he was discharged and gotten out of the plant he

1512 might come right back again. Mr. Nelson has stated the facts incompletely and the witness does not know whether there were special circumstances or occasion for special pressure or solicitation on the part of some CIO official or steward, on behalf of the particular employee. Without such basis the witness could only speculate. He evidently did not sit in on the appeal, if there was one, in consideration of the particular discharge that he is being questioned about. He would be unable to answer the question as put. Insufficient facts have been given him.

Mr. Nelson: Let me restate the question to save time. That is Mr. Donovan's first effort in the New Year and it is successful. I will change the question.

1513 Q. Now, what about repeated—just say anybody—repeated offenses, by way of going into the toilet to sleep? Might they be carried to the extent where a man would be put out of the employ of the Company?

A. That is right.

Q. It would make no difference whether he was a CIO steward or otherwise?

A. I wouldn't think so.

Q. Let us take the offense of gambling. That, of course, involves cooperating with some other employee. If a man has sort of a leadership in that regard, it could be very decidedly disruptive, could it not?

A. Yes, sir.

Q. Repeated offenses in that connection, no matter who it is, would you not say would justify a foreman in recommending discharge?

A. I would.

Q. In either of those events, if you take the case I just gave you, without taking anything else into consideration, he should be suspended?

A. That is right.

Q. And if he was not, his authority was undermined by somebody else, that is, the Foreman's?

A. To my knowledge, the other facts are given to the foreman why he isn't discharged.

1514 Q. We will say matters like some superintendents would not be a good justification?

A. No.

Q. While we are at this, let us take this subject of a discharge from the Company. Now, what happens to an employee who is complained of? He becomes known, that is, the facts of the complaint become known throughout the plant, do they not?

A. That is right.

Q. And particularly the department where he and his foreman are involved?

A. That is right.

Q. It becomes a direct challenge to the authority and prestige of the foreman, does it not?

A. Yes.

Q. When he commits himself on a query of that kind?

A. Yes, sir.

Q. And it does make a difference whether the man is merely transferred to some other department or whether he is discharged out of the plant and out of the employ of the Company?

A. That is right.

Q. It makes a difference to the foreman and it makes a difference in what the other employees under that foreman's direction thinks of the foreman, does it not?

1515 A. It does.

Q. It challenges his judgment and his prestige, does it not?

A. That is right.

Q. So that it is not just an empty matter whether he goes out of the employ or not; it is a substantial matter of discipline, is it not?

A. Well, as I said, Mr. Nelson, he might be a man that will get along with one foreman and not get along with another; we have had cases of that type.

Q. If he persists in gambling under one foreman, he is likely to continue under another, is he not?

A. That is right.

Q. Because the personality of the foreman does not enter into whether that man goes into the toilet and sleeps habitually or whether he goes in there and gambles habitually?

A. Only to the extent if he is lacking in supervision, to see that the men are kept on the job.

Q. It is possible the capacity of the foreman might enter into it, but generally, it is the characteristic of the man that shines out, is it not?

A. Usually it is.

Q. I will admit there is an exception to anything.

Trial Examiner Jaffee: It might also be the luxury

1516 of the rest room?

Mr. Nelson: It might be, but not at Packard's.

Q. (By Mr. Nelson) Well, are they usually luxurious there?

A. Usually they are not too bad, Mr. Nelson.

Q. I did not mean to impute any lack of care. What was the office of Mr. Hunt in Local 918?

A. I don't know that he held any office, except that he told me one time that he was an officer of 918.

Q. Well, we have a situation like this, at the disbanding of Local 918 the end result is that Mr. Hunt is advanced in position, and on the organization of the Foreman's Association, Chapter 5, the President and the Vice-Presidents are advanced in position and income. That is correct, is it not?

A. Yes, sir.

Q. As I understood you to say, these men had served some time in the Packard Plant?

A. Yes, sir.

Q. Mr. Hunt for how long would you say?

A. I think Mr. Hunt came in about 1936, around about that time.

Q. So he had been there four or five years, in round figures?

A. Well, it was around six years.

1517 Q. Six years; and Mr. Ruggles has been there how long?

A. About the same time.

Q. Six years, approximately?

A. Mr. Ruggles came, I think, in about 1935 or 1936; I am not sure.

Q. And Mr. Lempke came to work for the Company about when?

A. I am not sure when he did come.

Q. He had been there as long as or longer than the other two?

A. My impression is about the same time; I am not sure.

Q. You would not want to say that it was ten years?

A. I do not know, Mr. Nelson.

Q. At any rate, the Company had quite a little while to inform itself on the characteristics and capabilities of each of these men, had it not?

A. Yes, sir.

Q. I suppose the fact that they occupied these positions of trust and confidence in the minds of their fellow foremen had nothing to do with the Company finding out suddenly, so to speak, that they were due for promotion?

Mr. Dahling: I object to that. There is no testimony in the record it was found out suddenly.

Trial Examiner Jaffee: Sustained.

Mr. Nelson: I am asking him if he did not find out all of a sudden.

1518 Trial Examiner Jaffee: Your question assumes something there.

Mr. Nelson: That is right. I am cross-examining this witness: I am not taking advantage of him; I am putting it fairly to him, Mr. Examiner, that all of a sudden these three men were due for advancement.

Mr. Karasick: I would like to object to this line of questioning on the ground that there is not issue here with respect to unfair labor practices on the part of the Company involved and there is no question as to the improper promotion of foremen or members of any labor organizations, and I think it is an issue which is extraneous to this proceeding.

Trial Examiner Jaffee: For one thing, Mr. Karasick, it came in; counsel for the Company countered it with evidence. I suppose we might as well finish it. In any event, I think the question assumes a fact not in evidence and the mere fact that it is done in cross-examination, in my opinion, does not cure it. I have sustained the objection.

Q. (By Mr. Nelson) How do you determine who is next in line?

A. Usually if we are going to advance a man to a superintendent's office, usually we pick him from the general foremen group; if we are going to advance a foreman to a general foreman, we advance him from the Fore-

1519 man's group; we advance general foremen to superintendents.

Q. Now, when you say "we," who is "we"?

A. The divisional manager in charge of a particular division.

Q. But you had to take Hunt into another division?

A. That is right, he was out of a job entirely.

Q. What?

A. In the case of Mr. Hunt, he was out of a job entirely. His department had been discontinued.

Q. So your divisional foreman there could do nothing for him and he had to call his name to the attention of some other division, did he not?

A. He was called to my attention through the employment department.

Q. When you say who is next in line, you mean the divisional foreman decides who is next in line; do you not?

A. The division manager, you mean?

Q. Or the division manager, yes.

A. You said division foreman.

Q. I am sorry, it should have been division manager.

A. When they are advanced to a superintendent it is usually at the discretion of the divisional manager. In advancing assistant foremen to foremen, we follow the recommendation of the general foreman.

Q. Well, was the general foreman consulted as to
1520 who was next in line?

A. At what time, Mr. Nelson?

Q. As to Mr. Hunt, Mr. Ruggles or Mr. Lempke?

A. Mr. Ruggles went from general foreman to superintendent and Mr. Lempke went from general foreman to superintendent and then to divisional manager and Mr. Hunt was out of a job entirely and went on plant layout work as a Grade C layout man.

Q. Let me put it to you this way: As a matter of fact, none of the other supervisors who may have felt that they had more seniority and ability were the next in line were consulted about any of these three promotions, were they?

A. Not in those particular cases, no.

Mr. Nelson: That is all.

Mr. Karasick: Mr. Examiner, at this point I would like to move to strike all of the testimony in the record with respect to promotions of the individual the witness has just testified to, both on direct examination and cross-examination.

Trial Examiner Jaffee: It may stay.

Mr. Karasick: Are you finished, Mr. Nelson?

Mr. Nelson: Yes.

Q. (By Mr. Karasick) Mr. MacAuley, I hand you Company's Exhibit 35 and call your attention to the fact that there a number of names listed at the left-hand corner, top, of that exhibit after each name, and appearing also the designation of a department.

1521

A. Yes, sir.

Q. Taking Exhibit 35, beginning with the first name, that of Mr. Bellamy, will you identify who Mr. Bellamy is?

A. Mr. Bellamy is in charge of the department which issues these tests and specifications covering the results of the tests.

Q. Is a supervisor of the material specification department?

A. That is correct.

Q. These names in the upper left-hand corner of Exhibit 35 mean what. Why are they placed on there?

A. Copies of this test report are forwarded to these people.

Q. Will you identify Mr. Ralston?

A. Mr. Ralston is in charge of purchasing of tools and non-productive supplies in the car division.

Q. And Mr. Kierstead?

A. Mr. Kierstead is foreman of the tool storage division which supplies the shop with the necessary tools.

Q. Mr. Leonard?

A. Mr. Leonard is a foreman or a supervisor in charge of material tests in the aircraft division. His job is similar to Mr. Bellamy's.

1522

Q. You say he is a supervisor?

A. Yes, sir, the same as Mr. Bellamy. Mr. Bellamy is in the car division; Mr. Leonard is in the aircraft division. He is informing Mr. Leonard of the test so we won't duplicate the test in the two divisions.

Q. All right; Mr. Winfield is a general foreman?

A. No, Winfield is in charge of process of that particular department in which this test was involved UDC; and that is notifying Mr. Winfield that the test has been made, so the necessary changes can be made on the process routing.

Q. Then after that appears the word "foreman, YDC" and under that "superintendent, Y". That means the foreman and superintendent of those respective departments have also received copies of this document?

A. Yes, sir.

Q. With minor changes as to any of these, that is true, with respect to Company's Exhibits 36 to 41, inclusive?

A. That is right.

Q. I believe you testified, Mr. MacAuley, that if a foreman experienced difficulty with a particular tool or material, he could contact the inspection or process department without consulting any superior of his and have the trouble looked out for?

A. That is right, yes, sir.

Q. Now, could a foreman on contacting the process
1523 department say to them, "This tool is no good, take it out of here"? Would that be done without the approval of any superior of his?

A. That is done if he works with the process man and convinces the process man that the tool is no good. In other words, when that tool is on the job, it means we have already purchased a number of the same tools and it is a check to be sure that there is no way of altering that tool before we discard it entirely.

Q. You mean, he and the process man could get together and decide a tool should be changed?

A. Yes, sir.

Q. That would require the approval of the process man, as far as the foreman is concerned?

A. That is right, and that is later approved by the process department foreman. He approves all routings eventually.

Q. After the immediate process man has approved it, together with the agreement of the foreman?

A. Yes, sir.

Trial Examiner Jaffee: You say he approves them eventually. You mean he has the power to?

The Witness: He has the power to, yes, sir.

Q. (By Mr. Karasick) Now, if a foreman—and again when I speak of foreman, I speak of the term generally—

all grades of foremen recommend the discharge of
1524 a particular employee from the Company, as a whole, rather than from his particular department, who has the final word as to whether that employee is discharged entirely or sent to another department to work?

A. You mean by that, there has been no recommendation filed by the Union or anybody else protecting this man?

Q. Well, let us assume, first, that case where no recommendation has been made. Then what happens?

A. As to whether he is transferred is left in the hands of the employment department. But, as I said before, if the department foreman will write on his memorandum to the employment department that he recommends this man not be rehired in any other department, invariably that recommendation is taken and the man is discharged from the Company.

Trial Examiner Jaffee: What do you mean by "invariably" in that connection?

The Witness: There have been cases when it has slipped through the employment department and the employment department has not followed it through and kept the man out of the plant. I don't want to say it is one hundred percent. Cases have gotten away from us.

Q. (By Mr. Karasick) Let us take the mechanics of such a recommendation made by the foreman. The foreman sends a slip to the employment department?

A. Yes, sir.

1525 Q. Does the employee report to the employment department?

A. He clears through there, yes, sir, through the tool crib and the time department.

Q. When he goes to the employment department, is the foreman present?

A. No.

Q. So the employee tells the situation to the employment department and the foreman is not there?

A. No, sir.

Q. It is possible, is it not, that the employee can point out things to the employment department which can convince that department that he could have a transfer to

another department rather than to be discharged outright?

A. If the memorandum calls that he be discharged outright and the employee convinces the employment department the foreman is wrong, the employment department will still contact the original foreman and get additional facts on the case.

Q. Then the final word comes from the employment department, is that right?

A. Yes, sir.

Q. They might disagree with the foreman?

A. They might, but I don't know of any cases like that.

Q. You spoke of several foremen who had approved changes in their department with respect to the
1526 physical layout. Do you recall that testimony?

A. Yes, sir.

Q. Did those foremen in each instance recommend a change in the department or have the recommendations come from someone else?

A. No, we make a preliminary layout in the layout department, then we ask the foreman to come over and criticize the layout with us.

Q. You are talking in general. I want to know about these specific cases you spoke of.

A. Oh, in those cases the recommendation came from the foreman.

Q. I see. They had to get the approval of his superiors—that is, the foreman had to get the approval of his superior, did he not?

A. Yes.

Q. Again, the ultimate word, if there was disagreement, would be that the change should not be made if the foreman so recommended and the superior disagreed, is that right?

A. That is right; it depends on the expense a little too.

Q. I am not sure whether this has been covered or not, Mr. MacAuley, but with respect to Company's Exhibit 29, the second page, bottom right-hand corner, there is the signature of the department foreman whose name is Beyer.

A. Yes.

1527 Q. Before his name appears some initials. What are those initials and whose are they?

A. I don't know whose initials those are. I can't make them out at all.

Q. You do not know whose initials those would be?

A. No, I don't.

Q. I hand you Company's Exhibit 41—

Mr. Nelson: (Interposing) May I suggest the name Benoit as a possible solution?

The Witness: No, there is a K on the end of it, Mr. Nelson.

Mr. Nelson: I see. Well, he signs with sort of a T, though.

Q. (By Mr. Karasick) I hand you Company's Exhibit 41, at the bottom of the page in the right-hand corner and the second line there appears to be the same type of initials as also appear in Company's Exhibit 39?

A. Yes.

Q. Would that recall to your memory whose initials those are?

A. It looks here as though it is a divisional process and I think it probably is in this case, in number 39, because in this case the request for the trial came through the purchasing department. In other words, it was due to a War Production Order here that we were forced to

1528 discontinue the use of shellac. In the first place, the first place he would get that would be through the purchasing department.

Q. (By Mr. Karasick) Then the divisional process?

A. In this particular case the divisional process man requested the test in conjunction with the department foreman, who agreed to make the test.

Q. I see.

Mr. Karasick: No further questions.

Trial Examiner Jaffee: Are there any further questions of this witness?

Redirect Examination.

Q. (By Mr. Dahling) Mr. MacAuley, you are not a handwriting expert, are you?

A. No, I am not.

Q. When you testified as to the handwriting on Exhibits 35 to 41, inclusive, Company Exhibits, you were making a guess and giving your best interpretation?

A. I was giving my best judgment.

Q. But the sheets on which the handwriting appear, I believe you testified, were actually signed by a foreman?

A. Yes, a foreman has signed those sheets in the lower left-hand corner.

Q. I refer you now to Company's Exhibit 35, the second sheet.

A. On the second sheet it is signed by the foreman
1529 in the right-hand corner, on the results of the tests.

Q. That is the last sheet of exhibit, Company's Exhibit 35?

A. Yes, it is signed by the foreman in the lower left-hand corner.

Q. And in each of these cases, I am referring you now to Company's Exhibits 35 to 41, inclusive—I ask you if the last sheet, the report of the trial tests, appears to have been signed in each instance by a foreman?

A. Yes, those have been signed by the foreman.

Q. In connection with discharges by the foreman, the steward, of course, can ask for a hearing under the procedure set forth in the contract with the UAW?

A. That is right.

Q. And if the chief steward makes no such request, the employee concerned can ask the district steward to help him out?

A. He can ask the district steward or maybe the plant committee.

Q. Where a request is made for a hearing, then these hearings are held, as has been testified to before in this case?

A. That is right.

Q. At times, the foreman's penalty of discharge may not be carried out. Is that true?

A. That is right.

1530 Q. In other words, the plant committee and the industrial relations officer of the Company may feel that the foreman's penalty is too severe or possibly not based upon fact?

A. That is right. We have certain cases where the precedent has been set up before by some foreman who is not following through with his duty and we get those thrown at us. "Why penalize a man in one case and not penalize him in another?"

Q. And that was the reason for putting through a list of established penalties for certain offenses?

A. Yes, sir.

Q. So that you would have uniformity?

A. That is right.

Q. Mr. MacAuley, do you recall where a foreman ever had to step out of a job and quit because he did not follow the routing sheet?

A. Never, not to my experience.

Mr. Dahling: That is all.

Mr. Nelson: No further questions.

Mr. Karasick: No further questions.

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Q. (By Trial Examiner Jaffee) Mr. MacAuley, reading into the record your analysis of the foreman's job,
1531 you have divided it mainly into these divisions, have you not? His responsibility to Management, his responsibility to the workers, his responsibility for material and equipment and, finally, his responsibility to himself?

A. That is right.

Q. Then under that you have various headings and subheadings?

A. That is right.

Q. Thus, for instance, in connection with the first main division, that is to say, his responsibility to Management, you have such things as his responsibility for production, responsibility to maintain quality, to control costs, to make records and so on?

A. That is right.

Q. And then in connection with the next main divjsion, which is that of his responsibility to the workers, you have such items as responsibility to maintain discipline, secure cooperation and maintain cleanliness and to see that

proper recommendations are made as to promotions and transfers and so on?

A. That is right.

Q. In connection with the responsibility for material and equipment, you have such items as the handling of such personal property and their maintenance?

A. That is right.

1532 Q. Now, in connection with all of these things—of course, I have only mentioned some of them—is it or is it not true that because of the very nature of the mass production industry it is necessary for higher Management to set down, in as much detail as possible, its plans and instructions leading from the top and going down to the bottom, in order to maintain a constant control and check?

A. That is right.

Q. Of course, that constant control and check, I assume—and if I am wrong, you can correct me—applies primarily to the production process?

A. If I understand the question right, Mr. Examiner, it is necessary that we know at all times in production just where we stand all the way from the foreman right up to the division manager and including the factory manager. He must know by the hour what the production is and the rate of production.

Q. Essentially, when you come right down to it, would you say that the foreman—I am using the word broadly—the foreman's job principally is to see that the material which comes into his department leaves the department with dispatch and with the work of that particular department done upon it?

A. That is right, it is strictly his responsibility.

1533 Q. Would it be fair to say that he is somewhat the traffic cop, so to speak, so that subject to traffic rules, already set, he sees that the traffic moves through his department and to the next stop or department in line.

A. I would even go stronger than that and I would say he is the manager of his own department. He manages the people and sees that he has the material and tools and

if he hasn't got them, he sees the services or servicing division that we have established for mass production, which include material handling and tool division and tool stores and tool cribs and maintenance departments and planning engineering. All these services are available for him when he needs them.

Q. If I have understood one of your previous answers, it is the main job of the foreman to see that what comes into his department, the personal property that comes into his department—a part or the engine in its semi-finished state—comes through with dispatch and that the work done in that particular department is done upon it and that then that particular part or assembly or semi-finished article leaves that department and goes to the next department?

A. That is right.

Q. Of course, various men work on that part or semi-finished article in the process?

A. They all perform operations on it, yes, sir.

Trial Examiner Jaffee: Are there any further questions?

1534 **Redirect Examination.**

Q. (By Mr. Dahling) In your analysis of the foreman's job you used certain headings which have been referred to by the Examiner and one of the headings is "Responsibility to the Workers," to fit the worker to the job and to instruct the worker. That, of course, would be one of the duties of the foreman to perform for the benefit of Management also, would it not?

A. Oh, yes, Management benefits by it because unless the foreman produces, the whole plant suffers.

Q. And you also use the heading "Responsibility to Workers," to maintain discipline and that same responsibility is to the Company also, is it not?

A. Certainly.

Trial Examiner Jaffee: Mr. Dahling, I would assume, as a matter of fact, that all of these things are actually inter-related anyway. They are broken down just as a matter of convenience.

Mr. Dahling: That is the question I was going to ask.

Q. (By Mr. Dahling) You merely use the headings as a matter of convenience?

A. I put it there that way because unless he got the cooperation and help of the workers, he isn't going to get along any more than Management would get along unless he works with us all the time.

1535 Q. And it is his responsibility and duty to so conduct himself and the departments to get the production out of the men and lead them in properly doing their job?

A. That is right.

Q. And it is a responsibility to himself, which is of the same character, is it not?

A. Very similar.

Q. He has to see that he leads instead of drives. You have to have leaders in this business?

A. You cannot drive anyway.

Q. Coming to the question again of mass production, in mass production, it is necessary, of course, is it not, that, we will say, the assistant foreman—let me put it this way: The people in charge going down the line must rely on and have confidence in the people below them?

A. In mass production?

Q. Isn't that true?

A. Definitely.

Q. In other words, the division manager cannot possibly watch over every operation that goes on?

A. No.

Q. And he must have confidence in his superintendent below him?

A. Certainly.

1536 Q. And the superintendent, while he supervises perhaps a number of departments, cannot watch every operation and see everything that is going on?

A. He cannot.

Q. And he therefore must have confidence in the general foreman below him?

A. That is right.

Q. And the same applies to general foremen, does it not?

A. Yes.

Q. You must therefore have this confidence all down the line from the president down to the assistant foreman—in other words, those above must have confidence in those below them?

A. Confidence is what holds the structure of organization together. Destroy that and it is all destroyed.

Mr. Dahling: That is all.

Trial Examiner Jaffee: Are there any further questions.

Mr. Nelson: No further questions.

Q. (By Trial Examiner Jaffee:) Mr. MacAuley, take your last answer. Would that apply down to and including the rank and file?

A. Well, it is more important, I would say, Mr. Examiner, to have your management all coordinated together and in confidence with each other.

Q. More important than what?

1537 A. Than the men farther down the line into the workers' class, because in our opinion, any organization is built of three things: First, the capital structure, which is the Management and the workers. Now, in Management, the responsibility and scope of the man's job is so great and he has so many functions to perform compared to the workers who only work on one operation—it is more important to me that we have confidence within Management although it is important that we have the confidence of the worker also. To me Management is the most important of the two.

Q. Of course, without the worker you would not get anything produced?

A. That is right. You have to have his confidence too. However, I do not believe, to the degree we need it in Management.

Q. I want to make a statement, not as a fact, necessarily, but I want to get your observation on it. Suppose that I say to you instead of having two classes—that is to say, Management and the rank and file—suppose I say we have three for the sake of argument, namely, Management,

Supervision and the Rank and File, what would you say to that?

A. To me, supervision is Management.

Q. No matter how low it goes?

A. Down to the workers.

Q. You spoke of the responsibility of the foreman
1538 to himself. Do you recall that?

A. Yes.

Q. That is one of the headings, in fact, in the list you read into the record?

A. Yes.

Q. Did you intend by the five items you have listed under that heading, to include all the matters that come under the title "Responsibility to Himself"? I will change that. Would you say that all the items listed under that heading are all the items involved, which fit that title?

A. No, they are not all of them. Those are the ones that came to my mind as I wrote those notes.

Q. Would you say that what foremen in general think is their responsibility to themselves in connection with their work should be listed on that list?

A. Can I have that question read, please?

Trial Examiner Jaffee: Read the question.

(Question read.)

The Witness: Why, I think there are and can be others added to this list.

Q. (By Trial Examiner Jaffee) Suppose that the foreman—this is just a supposition now—Suppose the foremen think it is their responsibility to themselves to join the Foreman's Association of America. Do you think that that should be listed on the list?

1539 A. Whether it should be on the list or not?

Q. That is right.

A. Well, there are lots of questions on that. That covers a lot of territory. If I was a foreman there would be one answer and they might have another answer. If I was a foreman I would not be interested in the Foreman's Association of America.

Trial Examiner Jaffee: Are there any further questions?

Redirect Examination.

Q. (By Mr. Dahling) On this last heading on the list where Responsibility to Himself is the heading—I believe you said that you picked these designations for no particular fundamental purpose?

A. I put them in there where I felt it was most important—the most important part of the discussion to fall into.

Q. Now, where you say to see that he leads instead of driving, that is also one of his duties as a good foreman, isn't it?

A. That is right.

Q. That he avoid being authoritative or belligerent, that is a duty for the benefit of Management also?

A. That is for his own protection, or else he will have trouble with the workers.

Q. C. D. E. under the same heading are the same characteristics and duties and responsibilities towards
1540 Management, as well as towards himself?

A. That is right.

Trial Examiner Jaffee: So that I suppose you would not consider it the foreman's duty to Management to join the Foreman's Association of America?

The Witness: No, sir, not to me.

Mr. Dahling: Mr. Examiner, I believe we have some confusion and I suggest we knock off the heading entirely.

Trial Examiner Jaffee: I don't think it is descriptive myself.

Mr. Nelson: I would like to ask the witness a few questions.

Recross-Examination.

Q. (By Mr. Nelson) I would like to ask you, Witness, if you think a foreman has a responsibility of duty to his fellow foreman?

A. Does he have any responsibility?

Q. Does he have any in a plant like Packard?

A. He has to develop cooperation and coordinate with them.

Q. Is that all?

A. What else?

Q. Let's take the situation—do you think he owes his fellow foreman any duty of getting in line and taking promotions as he earns them on merit and seniority? Do you think he owes his fellow foreman a duty of that kind?

1541 A. Those things come by themselves. If Management has confidence in him and he in they, they will take care of it automatically.

Q. You don't think that he as a foreman has any duty to consult with his fellow workers as to what procedures are just and what priorities are just and fair in the plant and as to what men should be raised and what men should be transferred in order in any way, and the order in which that should be done? Do you feel that he does not owe his fellow foreman a duty of that kind?

A. The Management, superintendent and general foreman should have confidence in the foreman and the foreman in reverse should have confidence in these men.

Q. And each one should push his personal advantage and advancement at will and as he can?

A. That is typical of a good leader.

Q. That is typical of the kind of relations you would like to see in the Packard Motor Car Company plant among the foremen, is it not?

A Yes.

Mr. Nelson: That is your answer. That is all, Mr. Examiner.

Trial Examiner Jaffee: I think I should say that my last two or three questions merely were to indicate that the last heading "Responsibility to Himself" was prob-

1542 ably a bit inappropriate on the sheet. I just wanted to point that out. Mr. Dahling, apparently we agree on that phase of it anyway.

Mr. Dahling: Yes, Mr. Examiner.

Trial Examiner Jaffee: Are there any further questions of the witness, gentlemen?

Mr. Nelson: Nothing further.

Mr. Dahling: Nothing further.

Mr. Karasick: No questions.

Trial Examiner Jaffee: The witness is excused.

(Witness excused.)

Trial Examiner Jaffee: We will recess at this time until 2:15.

(Thereupon a recess was taken until 2:15 o'clock P. M.)

1543 After Recess.

(Whereupon, the hearing was resumed, pursuant to the recess, at 2:15 o'clock P. M.)

Trial Examiner Jaffee: The hearing is in order. Are we ready to resume?

Mr. Dahling: I understand we are finished with Mr. MacAuley?

Trial Examiner Jaffee: So I understand.

Mr. Dahling: I call Mr. Patzkowsky.

ELMER G. PATZKOWSKY,

a witness called by and on behalf of the Company, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Dahling): Mr. Patzkowsky, are you employed by the Packard Motor Car Company?

A. I am.

Mr. Nelson: What was his first name?

Mr. Dahling: What is your first name? Is it Elmer?

The Witness: Yes, sir.

Mr. Dahling: And your initials?

The Witness: G.

Mr. Dahling: Will you spell your name for the benefit of Mr. Nelson?

The Witness: P-a-t-z-k-o-w-s-k-y.

1544 **Mr. Nelson: The only thing I was in doubt about was whether it was an "i" or a "y."**

The Witness: Y, I don't know.

Q. (By Mr. Dahling): Mr. Patzkowsky, how long have you been employed by the Packard Motor Car Company?

A. Since the early part of 1936.

Q. You graduated from Teacher's College in Kalamazoo, Michigan?

A. That is right.

Q. What did you specialize while you were in college?

A. In machine shop.

Q. After you left college will you give us a brief recital of your experiences in the industry?

A. The first year out of college I taught machine shop and auto shop in the Flint public schools. The three following years I worked for the telephone company as a foreman in construction. After that I returned to school part time and worked in several job shops here in Detroit as a toolmaker. From there I went to Chrysler Corporation.

Q. About what year would that be?

A. 1934, I believe around 1933. I think I first went to Chrysler.

Q. What work did you do there?

A. I worked as a production worker on production work, as a jobsetter.

1545 Q. You worked as a jobsetter during the time you were at Chrysler?

A. Yes. From Chrysler I came to Packard Motor Car Company.

A. T[illegible] was in the early part of 1936?

A. 1936, yes.

Q. What did you first do when you joined Packard?

A. The first job I did at Packard was operate some Gisholt lathes.

Q. And you were a rank and file worker at that time?

A. That is right.

Q. Will you tell us what happened after that? Let's fix that date again, that was in the early part of 1936, did you say?

A. February, I believe; in the early part of 1937 I was made an assistant foreman.

Q. In what division?

A. That was the "S" Division at that time.

Q. What is manufactured in the "S" Division?

A. That was the general machine division and the particular department where I worked in was where we machined and assembled the differentials.

Q. Were there other assistant foremen in that division?

A. There were, yes.

Q. About how many, do you recall?

1546 A. In the whole division, I wouldn't know. I couldn't even attempt to guess. I wouldn't know as far as the division was concerned.

Q. Well, did you have a general foreman over you?

A. I did.

Q. Did you have foremen in that division?

A. Yes.

Q. Then how long were you in this "S" Division as assistant foreman?

A. Until 1939, November of 1939.

Q. Then what happened?

A. I was made a general foreman.

Q. In what division was that?

A. That was in the same division, the "S" Division.

Q. The same division.

A. Yes, sir.

Q. Have you worked in any other division in the Packard plant other than the "S" Division?

A. Yes.

Q. What other division?

A. In the "D" Division.

Q. What do they do in the "D" Division?

A. Well, that is the general machining division, in the aircraft division again.

Q. In any other divisions?

1547 A. "G" Division.

Q. What is done in that division?

A. That was a majority of machining of gears.

Q. Did you work in any other divisions?

A. Temporarily, at times, I worked in the mechanical division.

Q. Does that bear any other designation, by letters or by numbers?

A. Well, at that time, I forget what the symbol for the mechanical division was. I can't recall what that was.

Q. Well, you were a general foreman while you were working in the various divisions that you have just named?

A. All but the "G" Division and the Mechanical Division.

Q. What was your title in those divisions?

A. Well, in the Mechanical Division in periods of changing models, we were loaned to the Mechanical Division as process men.

Q. Was that done frequently?

A. Quite frequently.

Q. Was that done frequently during slack seasons, taking foremen into the Process Department?

A. That is right, it was.

Q. They would be taken from various other departments which had slowed down because of the change of model?

1548 A. Yes.

Q. They would work on the new designs for the new cars.

A. Well, they wouldn't really work on the designs of the new cars. They would work on the processing of the new parts for the new cars.

Q. I see. That would be working up the material which appears in the routing sheet, Exhibit 29, which is in evidence here, Company's Exhibit 29?

A. Yes.

Q. Now, then, after you were general foreman, what job did you have?

A. After I was general foreman I was made manager of the "G" Division.

Q. When was that?

A. In 1942.

Q. How long did you remain manager of the "G" Division?

A. Until September of this year.

Q. What is your present job?

A. Industrial Relations Manager.

Q. Was the Industrial Relations Department reorganized in September of this year?

A. To some extent it was.

Q. While you were acting in the capacity of a general foreman did you ever recommend any promotions from the rank and file to the position of assistant foreman?

1549 A. I did.

Q. What happened to those recommendations?

A. They went through.

Q. Did you as general foreman ever recommend the advancement of assistant foreman to foreman?

A. I did.

Q. What happened to those recommendations?

A. They were all carried.

Q. Would you say that you did that on more than one occasion?

A. Yes, in several cases.

Q. Would you say that you also recommended several of the rank and file to assistant foreman and those recommendations were carried out?

A. Yes.

Q. While you were acting as general foreman did you ever have occasion to send through a query clearing a man from the rolls?

A. Yes.

Q. Did you have occasion to do that more than once?

A. Yes.

Q. Would that be for incompetency and other reasons?

A. Yes.

Q. What happened to those recommendations?

1550 A. As a general rule they carried through.

Q. But they might have disagreed with you occasionally?

A. That is right.

Q. When I say "disagreed," were some of them carried through the Union grievance procedure?

A. That is right.

Q. At the hearings held, the people holding the hearings did disagree with you on some occasions?

A. Well, perhaps not disagreeing so much as bringing out other evidence that they shouldn't be discharged from the Packard Motor Car Company.

Q. In other words, for reasons perhaps unknown to you, they decided that they shouldn't be discharged?

A. That is right.

Q. Have you had occasion while you were acting as assistant foreman, foreman or general foreman to apply disciplinary measures to the workers?

A. Yes.

Q. You have sent through the queries of the type which are in evidence here?

A. I have, yes.

Q. You have been at this hearing since the beginning, have you not, Mr. Patzkowsky?

A. Yes.

Q. What was the general result of these queries that
1551 were sent through in disciplinary cases; were you supported in some of them?

A. In by far the large majority I was supported.

Q. Coming back to our routing sheet, Exhibit 29, I believe you are familiar with that, are you not?

A. Yes.

Q. Have you had any experience in the preparation of these routing sheets?

A. Plenty of experience.

Q. Have you as a foreman ever been called into conferences in connection with the preparation of routing sheets?

A. Yes.

Q. Have you in your position of general foreman also been asked to attend conferences in connection with the preparation of routing sheets?

A. Yes.

Q. Have you signed these routing sheets as appears on the first page of Exhibit 29?

A. Yes.

Q. Were those signed before or after they were distributed in the plant?

A. Signed before.

Q. They were signed, but would be signed by you as a foreman before they were distributed through the plant?

1552 A. Yes.

Q. When you were a general foreman were you also called upon to check the routing sheets and execute these sheets if you felt that they were satisfactory?

A. Yes.

Q. Was that on one occasion or more than one occasion?

A. Plenty of occasions.

Q. When you say "plenty of occasions," would you say that it would happen in every case where there was a change in routing through your particular department?

A. In every case.

Q. Would that apply—would the same apply to the other divisions, other than the divisions that you have testified you worked in?

A. I believe that is true.

Q. Did you ever have occasion to object to any of the processes provided for in any routing sheet?

A. Yes.

Q. That is, you have disagreed with what the process man's original ideas were on how the work should be done, is that right?

A. That is right.

Q. What happened on that occasion?

A. We usually recommended a different method.

Q. After you made that recommendation what would

1553 happen next?

A. As a rule it would be approved and the method put into effect.

Q. Would you discuss your recommendation with anyone?

A. Yes, occasionally.

Q. Who would it be on this discussion?

A. The plant manager and representatives of the Master Mechanics Division, the process men and his supervisors.

Q. Did you have occasion to make recommendations more than once?

A. Yes, lots of times.

Q. Were all of them carried through?

A. The majority of them, I believe, were.

Q. And in some they disagreed with you?

A. That is right, some they disagreed with.

Q. However, you continued in the employ of the Company, nevertheless?

A. I did.

Q. Have you ever had occasions to request material tests?

A. Yes.

Q. I show you Company's Exhibits 35 through 41 inclusive and ask you if these are the requests and reports on material tests that may be requested? I will ask you if those are the form of report and request?

1554 A. These are the form of report and requests that we use in requesting a change of material.

Q. I believe you stated that you have made requests for these material tests?

A. I have.

Q. Would you in that connection sign the request which appears to be the second sheet, we will say, of Company's Exhibit 35?

A. Yes.

Q. And did you make those requests as general foreman?

A. Yes.

Q. Have you made them as foreman, also?

A. Yes.

Q. I believe that you stated you have on more than one occasion made these requests for material—for testing material?

A. Yes.

Trial Examiner Jaffee: May I interject one question there?

Mr. Dahling: Yes, sir.

Trial Examiner Jaffee: Were you ever a foreman as distinguished from an assistant foreman or general foreman?

The Witness: I was not.

Q. (By Mr. Dahling): That is correct. I believe you

1555 went from assistant foreman to foreman?

A. That is right.

Q. When you testified that you requested these tests to be made did you ever make such request as assistant foreman?

A. I did.

Q. Were these requests complied with?

A. Well, as far as these requests usually are made—in a lot of requests you try two or three different materials and you reject one or two of them and decide which one you want to use. As a rule we did not just write in one type of material. You might get two or three companies—for instance, if we had trouble on a grinding job and we wanted to use a different type of grinding wheel we might go and get two or three different companies and get their sample wheels and keep records of the use of each wheel and the quality of the work gotten off of the wheel and we would decide which would be the one we would use. On each particular wheel a request would be made out. We would perhaps reject two and keep one.

Q. Who ran those tests?

A. The production people.

Q. What did you have to do with the tests as foreman?

A. I supervised to see that it was being carried out
1556 under normal conditions.

Q. Then after the test was run, we will say on this grinding wheel, was a report made out?

A. Yes.

Q. And let's take your case, who would make out that report?

A. Well, the first report of the result of the test would be made out by myself as supervisor of the job.

Q. Would you then sign that report as a general foreman, if you requested it as a general foreman?

A. Yes.

Q. And then what would happen to the report? To whom would it go then?

A. Well, that would be taken back to the department that took care of all these requests and they in turn would type it up and distribute it to the different people that would be concerned in it, the purchasing department, stores, Master Mechanics Division and everyone that might have any particular use or should be informed that there was being a change made.

Q. Would a typed copy of the report come back to you as general foreman, the general foreman who had made out the pencil copy in the first instance?

A. It would.

Q. And did you request a number of these tests
1557 during your time that you were employed as assistant foreman and foreman?

A. Yes.

Q. Have you ever requested any change be made in the operations of any department that you might have had charge of as general foreman?

A. Change in the personnel, you mean?

Q. In the method of production, we will say?

A. Oh, yes, the rearrangement of machinery or rearrangement of other things connected with the production of stock bins and benches—

Q. Would you in that case make out a written recommendation?

A. Yes.

Q. Who would receive that written recommendation?

A. Those recommendations were usually turned in to—directly to the division manager.

Q. Were you ever called into conference in connection with any recommendations you had made?

A. As a rule those recommendations were—there was a space on the recommendations for a reason why you wanted those changes and if those reasons did not seem sufficient why, you might be called in for a conference on the thing. As a rule if you made those requests out in full they were never questioned and went right on through.

1558 Q. Have you ever, as a matter of fact, been called into conference on these changes that you might have suggested?

A. Yes.

Q. Now, there has been some testimony in the record on this matter of the layout of the department. While you were acting as a general foreman, were you ever called into conference to discuss the layout of the particular department that you were in at the time?

A. Yes.

Q. Were you ever as an assistant foreman asked to discuss with others the layout?

A. Yes, when I was an assistant foreman I remember one model change in particular where we had quite a few

changes to be made. The layout man was continuously contacting myself and other people of supervision in the department.

Q. As general foreman in these divisions where you supervised, did you ever hold conferences with your foreman?

A. Yes.

Q. And your assistant foreman?

A. Yes.

Q. As a matter of fact, you were on the floor most of the day, were you not?

A. As a general foreman you spent most of the time
1559 on the floor.

Q. You were more or less in constant touch with the foreman and assistant foreman in your department?

A. Yes.

Q. And you were available at all times to discuss their problems?

A. That is right.

Q. Did they bring their problems to you?

A. They did.

Q. Did you attend the foremen's training school at Packard?

A. Yes.

Q. Did you ever have anything to do with the school itself?

A. Yes. When I was an assistant foreman I was a leader of those conferences for one season.

Q. When you say "a leader" just what was your job?

A. Well, we would have one meeting of the leaders where we would discuss the topics we would want discussed with the other supervisors and get a general knowledge in which direction we would want to steer the conference from the topics we had. The following week we would conduct a conference of our own with other supervisors.

Q. Now, Mr. Patzkowsky, you have testified as to some of your experiences as a general foreman and assist-
1560 ant foreman, that covers, as I take it, four divisions?

A. Four divisions? I wouldn't hardly say that. I worked in four different divisions but in reality I was

being loaned to the Mechanical Division. However, I was working in the four divisions when I was in there.

Q. But you actually did work in three different divisions?

A. Three different production divisions.

Q. They were all production divisions?

A. Yes.

Q. You were then under three different division managers—I am relating to the time you were general foreman and assistant foreman?

A. Four different division managers, because we had a change one time when I was a general foreman.

Q. Did these division managers ever have conferences with the general foremen?

A. Yes.

Q. Was that just occasionally or would you say frequently?

A. I would say frequently.

Q. From your experience and observation while in the Packard Motor Car Company, acting as an assistant foreman, general foreman and division manager, would you say that these things you have testified about that
1561 you have done are also done by other foremen and general foremen and assistant foremen throughout the plant?

A. Generally I would say yes.

Q. The results of their recommendations were substantially the same as were the results of recommendations that you made?

A. Yes.

Q. In other words, these things you have testified to are more or less what you call standard practice of the Company?

A. I say they are.

Mr. Dahling: I wonder if we could go off the record for a moment?

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Q. (By Mr. Dahling): Mr. Patzkowsky, you heard the testimony of Mr. MacAuley?

A. I did.

Q. Did you go over the analysis of a foreman's job that was prepared by Mr. MacAuley?

A. I did.

Q. Which has been placed in the record in this case?

A. Yes.

Q. Will you state whether or not the duties and responsibility and authority of a foreman which are set
1562 forth in this analysis of a foreman's job are actually their duties, responsibility and authority in the Packard Motor Car Company?

A. I believe they are.

Q. You agree with the testimony given by Mr. MacAuley as to the duties and responsibilities and the authority of foremen in the Packard Company?

A. I do.

Q. There is testimony in the record that on March 1, 1942, an overtime policy change was put into effect with respect to the payment of overtime to foremen; do you recall that?

A. Yes, I do.

Q. Did you know about that change before it went into effect on March 1, 1942?

A. Yes.

Q. How did you happen to hear about it?

A. Well, there were several different plans being discussed in meetings with our plant manager at the time. I was a division or general foreman, at the time.

Q. Your division manager held various conferences in connection with this matter of overtime pay?

A. He did.

Q. You were present at those conferences?

A. Yes.

1563 Q. Were there others also present?

A. Yes.

Q. Other general foremen?

A. That is right.

Mr. Dahling: I ask that these documents be marked as Company's Exhibits Nos. 42 and 43.

(Thereupon, the documents above referred to were marked Company's Exhibits Nos. 42 and 43 for identification.)

Q. (By Mr. Dahling): Mr. Patzkowsky, Petitioner's Ex-

hibit 24 is a sheet on which there appear to be shop rules and penalties for violation, reissue December 14, 1944. Were there previous issues of these rules for penalties?

A. Yes.

Q. I show you Company's Exhibit 42 and Company's Exhibit 43 and ask you what they are?

A. Well, on the Exhibit 43, dated September 1, 1944, were a group of rules that were negotiated with the Plant Committee of the CIO, Local 190, and our Labor Relations man.

Q. Is that the first issue of the printed shop rules and penalties for violations?

A. That is the first group of them. At one time or another each particular one may have been negotiated
1564 at meetings that they had, but this was the first time that they had grouped them as one group.

Q. Exhibit 42 was the reissue of Exhibit 43, which is dated September 1, 1944?

A. Yes, with some minor changes because in checking back we found that they had changed the penalties that had been in effect in previous meetings, but had not been published, and the rank and file didn't agree with all the penalties, so they were reissued.

Mr. Nelson: There is no objection.

Mr. Dahling: I offer Exhibits 42 and 43 in evidence.

Mr. Karasick: No objection.

Trial Examiner Jaffee: Received.

(The documents heretofore marked Company's Exhibits Nos. 42 and 43 for identification were received in evidence.)

Q. (By Mr. Dahling): Now, I notice on Petitioner's Exhibit 24, the third rule, "Fighting—Any employee striking a blow, the penalties are one week, two weeks, to be negotiated." What does that mean?

A. To be negotiated?

Q. No,—

A. (Interposing): The first time that the man is fighting, the general rule is one week off. I believe they say one week the first time?

1565 Q. Yes.

A. And when the second time he is fighting, it is two weeks off.

Q. Yes.

A. Perhaps the third time to be negotiated, whether he be discharged or removed to a different department or penalized in any other manner.

Q. To be negotiated would mean that there would be a hearing with the Union people in connection with the third offense of that character?

A. Not necessarily, to be negotiated between the foreman and the steward of the department.

Q. If they agreed upon a discharge, why, it would be a discharge?

A. Yes, or a transfer or whatever it might be.

Q. Whenever on this exhibit P-24, under the heading "Penalties" there appear to be more than one penalty, that covers the matter of first, second or third offense?

Trial Examiner Jaffee: It says so on the exhibit there.

A. I think that is in the lower paragraph, the lower line.

Mr. Dahling: Yes, I believe it does.

Q. (By Mr. Dahling): I show you now Petitioner's
1566 Exhibit 33 and call your attention to the paragraph numbered 2 on the first page of this exhibit, which reads as follows: "The great majority, ninety per cent of the grievances and queries should be disposed of by the Division Labor Relations representative, as his authority is decisive in all cases except those involving rates and general plant-wide Company policy." Will you explain this particular paragraph, what that means?

A. Well, perhaps I should explain the thing as a whole. First, it is the minutes of the meeting between the Labor-Management Committee and the Plant Committee of Local 190, and this was taken down with a stenographer as it was said in the meeting.

Now, the meaning of what we were getting at in the previous paragraphs, which tells you that the cases were not being handled according to procedure. Some overly ambitious stewards didn't attempt to negotiate or bargain with the steward. He immediately wanted to go to the top—I didn't mean to say with the steward—with the foreman. He immediately wanted to go to the top to plead his case, and we were attempting to get the Plant

Committee to get their stewards in line that they would follow procedure, that they would stay with the first step of the grievance with the foreman and the steward, and then the next step would be with the district steward and the district Labor Relations man.

1567

Q. Is that the step that is referred to in paragraph 2?

A. Yes, that is the step.

Q. See if I get this straight. Your first step in the grievance procedure is between the foreman and the chief steward of the Union, is that correct?

A. That is right.

Q. Then if they can't agree, your next step is the division steward and the division Labor Relations man representing the Company, is that right?

A. We call, what you call the division steward, we call them district stewards.

Q. District stewards. Yes, I think that is right. I have heard that used. You were referring to the fact that grievances that get by the first step and get into the second step, ninety per cent of those should be settled before they go up to the third step?

A. That is right.

Q. In other words, only ten per cent of those that get to the second step of the grievance procedure merited any further action further up?

A. That is right.

Trial Examiner Jaffee: What is the lowest rated steward in the plant?

The Witness: The lowest grade of steward that we recognize as a steward is a chief steward. Now, the chief steward nominates, or he appoints deputy stewards to act in his absence, which we negotiated at that time. Otherwise he is just another member of the rank and file when the chief steward is on the job.

1568

Trial Examiner Jaffee: The steward immediately above him is the—

The Witness: The district steward.

Trial Examiner Jaffee: I think you began your first comment with reference to Petitioner's Exhibit 33 by referring to a Labor-Management Committee; what is that?

The Witness: That is what we call the Labor Committee. It is the people from the plant committee representing the Local UAW-190 and the management is our Committee of our own people.

Trial Examiner Jaffee: I think you started your answer rather ambiguously because you said the Labor-Management Committee met with the UAW Local.

The Witness: I should have said it was a joint meeting of the Labor-Management Committees.

Trial Examiner Jaffee: I see.

Q. (By Mr. Dahling): The grievance procedure, of course, is set up in the contract Packard has with UAW Local 190?

A. That is right.

1569 Q. And the agreement in Article 2 provides that there shall be a plant committee of the UAW of not more than three selected by the Union and then there shall be representatives of the Industrial Relations Department and these two committees are supposed to meet as the top step in the grievance procedure?

A. Yes.

Q. And also to discuss problems which might arise?

A. That is right.

Q. I show you Petitioner's Exhibit 25 and ask you if that is the chart of the Labor-Relations Division which is now in effect at Packard?

A. Well, I wouldn't say that this is the chart that is in effect now. I believe that there have been some additions made to this (indicating). This does not happen to be dated but I know that there have been some additions.

Q. That is in names, you mean?

A. Yes.

Q. But the general set-up of the division is that as set forth on this Petitioner's Exhibit 25?

A. Yes, as far as myself, Mr. Smith, Mr. Watts and Mr. Probyn are concerned. Some of the men on the day shift here may have been transferred over to the night shift. There have been additions to both day and

1570 night shifts since that was made up.

Q. You do have an assistant Labor Relations manager on duty during the day?

A. Yes.

Q. And also one for the night shift?

A. That is right.

Q. And these assistant Labor Relations managers have district Labor Relations men under them?

A. That is right.

Q. And they are present during the day and also at night?

A. Yes.

Q. These are the district Labor Relations men, referred to in this chart,—are the men who represent management at the second step of the grievance procedure with the UAW?

A. Yes.

Q. Mr. Patzkowsky, I forgot to ask you this question: Petitioner's Exhibit 24 lists thirteen offenses and the penalties for each of those offenses; might there be other things for which a rank and file worker would be disciplined by the foreman?

A. Yes.

Q. Well, can you think of some of them?

A. Well, if the individual was continuously being
1571 careless in his work and causing excessive tool breakage he might be demoted to a more simple machine where he wouldn't receive as much pay.

Q. Who would recommend that demotion?

A. The foreman.

Q. Might there also be a case of a rank and file worker refusing to do the job?

A. Yes.

Q. And improperly using tools?

A. Yes.

Q. And excessive breakage of tools?

A. Yes.

Q. And also creating unsafe working conditions?

A. That is right.

Q. Now, who would fix the penalty in those cases where they are not covered by the penalty sheet, Exhibit 24?

A. The immediate supervisor.

Q. And that would be—

A. (Interposing): The assistant foreman or foreman.

Mr. Dahling: You may cross-examine.

Cross-Examination.

Q. (By Mr. Nelson): May I have the three sets of grievances and penalties, Exhibits 24, 42 and 43? I have before me, Mr. Patzkowsky, Petitioner's Exhibits 24 and Company's Exhibits 42 and 43 and I notice that
1572 Exhibit 24 was signed by a committee for the maintenance and production workers Union and the Company, is that right?

A. That is right.

Q. And it is dated December 14, 1944? I also note that Company's Exhibit 43 is issued under date of September 1, 1944 and only on the authority of the Company?

A. Well, Mr. Budd—

Q. That is correct, isn't it?

A. Yes.

Q. And Mr. Budd's position is what?

A. He was Labor Relations manager at that time.

Q. And Company's Exhibit 42 is dated October 17, 1944, likewise, and purports to be an authority only on behalf of the Company?

A. Yes.

Q. Now, as a matter of fact, what happened was, that the Union kicked, so to speak, to put it shortly, isn't it so, to having these automatic penalties fixed without any consultation with them?

A. The rank and file did. The Plant Committee could not sell the bill of goods, you may say, to the steward body.

Q. They made two attempts and then failed and then negotiated with the Union stewards?

A. I don't follow you.

1573 Mr. Donovan: I do not believe the witness understood your question.

Q. (By Mr. Nelson): After the first two—Exhibit 43 on September 1st and Exhibit 42 on October 17th, of the past year, then you got together with the stewards and negotiated Petitioner's Exhibit 24?

A. No, that is not the stewards, that is the Plant Committee.

Q. That is the only thing? I will amend my question, it was negotiated with the Plant Committee?

A. That is right.

Q. When the maintenance and production workers, the hourly-rated workers, picked on the setup in Exhibit 42 and Exhibit 43, Company's Exhibits—

A. (Interposing): They kicked on it due to the fact that all these rules had been in previously at one time. In previous meetings the penalties were set of some sort and when they tried to group them together and some of the penalties were changed—when the old records were dug up is when they took the thing up with the Plant Committee and wanted to know why, when they had agreed to something previously—why they were making the changes.

Q. Generally speaking, the penalties are lower in Petitioner's Exhibit 24 and less severe than in Exhibits 42 and 43, isn't that a correct statement?

1574 A. That is right, and some of them have even been taken out.

Q. And that was on the objection by the Plant Committee?

A. No, not entirely of all the Plant Committee, the Army objected to one of them.

Q. To one of them?

A. Yes.

Q. Which one was that?

A. The one on the coffee-making proposition. First, we had a penalty for making coffee during working hours.

Q. And the Army objected to that?

A. No, the Army had given permission to make coffee during working hours, and they did not want to go back on that, on their word.

Q. To your knowledge was any foreman consulted about any of these exhibits, Exhibits 24, 42 or 43?

A. I think at different times in the last several years the foremen have been consulted on all of them. That is where, you might say, the law of averages was derived from.

Q. By the words "the foreman" just who do you mean?

A. The foreman.

Q. You mean the Foreman's Association of America or representatives of organized foreman or just occasional foremen were asked a question?

1575 A. I would say foremen in groups by the plant managers.

Q. In groups? What kind of groups?

A. When the plant manager would have a meeting of the supervisors some of these things would be discussed.

Q. Oh, you mean some of the offenses described here?

A. Yes.

Q. Some of the things that disturbed the work were discussed at these meetings?

A. Yes. You see, we were getting beat, one foreman to another. The Union operates a good deal on common law. If you pass out a penalty one day for fighting of one day off in one particular department in one week and the next week a foreman in another department wants to give a fellow a week off, he will say you cannot do that because they have set a precedent in the previous week by only giving him one day off. That is what caused the bringing about of getting uniform penalties.

Q. And it was in effect the lack of uniformity which produced the uniformity represented by these exhibits?

A. That is right.

Q. As a matter of fact, as to none of these publications or announcements, that is Company's Exhibits 42 and 43 and Petitioner's Exhibit 24, were foremen as a body consulted, were they?

A. As a body?

1576 Q. Yes.

A. No.

Q. As a matter of fact, all of the foremen at Packard's are themselves subject to these rules, aren't they?

A. I presume they are.

Q. And you have the situation where a foreman may be disciplined under a set of rules fixed by maintenance and production workers Union and the Company, without consultation with them, isn't that a fact?

Mr. Donovan: I will object to that question because

the testimony does not show they were subject to the rules. They were evidently rules settled upon between the CIO and the Company which the foremen used. It does not mean they were subject to them.

Mr. Nelson: I am entitled to ask that question, Mr. Examiner.

Trial Examiner Jaffee: The witness did say "I presume so" in answer to that precise question a moment ago.

Mr. Donovan: That is the reason I object to this question. I do not think the witness should be required to answer the question just asked by counsel.

Trial Examiner Jaffee: I think it is proper in view of his previous answer. You may answer.

Mr. Nelson: That is the fact, isn't it, Mr. Patz-
1577 kowsky?

The Witness: In rare occasions where penalties are being given to our supervisors, the same as the rank and file.

Q. (By Mr. Nelson): Under these rules?

A. Under these rules, that is right.

Q. You seem to be a little generous about it. I suppose the occasions for disciplining foremen are as you say, rare?

A. That is right.

Q. Comparatively?

A. That is right.

Q. Because they are a disciplined and selected body of men?

A. Yes.

Q. Therefore, their transgressions, perhaps, on a percentage, are fewer in number?

A. When we are picking our supervisors we hope that none of them will ever be caught on any of these rules.

Q. So, therefore, you use the word "rare"?

A. Yes.

Q. The fact of the matter also is, isn't it, Mr. Patzkowsky, that when the question arises as to whether the foreman has transgressed the rule as evidenced by these exhibits 24, 42 and 43, he appears individually
1578 and without any representation, doesn't he?

A. No, I wouldn't say that.

Q. Doesn't he? Who appears for him, then?

A. As a rule his immediate supervisor will appear with him.

Q. He appears against him, doesn't he, as the man who leveled the charge, probably, doesn't he?

A. I wouldn't say that he appears against him.

Q. Does he appear on behalf of the foreman or on behalf of the Company? I am speaking of his immediate superior.

A. I imagine he appears on behalf of the Company.

Q. Then the man is alone, isn't he?

A. That is right.

Q. The foreman is alone?

A. Yes.

Q. Let's take another situation. Let's take the situation of a dispute as to whether a maintenance and production worker or the foreman was the aggressor or was in the wrong and you set your grievance machinery in motion. Of course, there the foreman could not solve it, he being the first step in the grievance machinery, and automatically it would go at least one step higher, wouldn't it?

A. Not necessarily.

Q. Would the foreman be allowed to pass on his
1579 own guilt or innocence as between he and a production worker or would they take it a step higher?

A. I cannot imagine the kind of case you are talking about, Mr. Nelson.

Q. A dispute as to who hit the other or who hit first.

A. Oh, you are talking about a fight case?

Q. Take that as an example. I made it broader, where it is a dispute as to whether the worker, the hourly-rated worker or the foreman—let us say the hourly-rated worker says the foreman hit him first and the foreman says that he did not hit him but put up his hands to protect himself. There you would have to take it somewhere besides the foreman, wouldn't you?

A. Yes.

1580 Q. (By Mr. Nelson) And immediately the steward appears for the maintenance production worker, doesn't he?

A. Yes.

Q. That is right, is it not?

A. Yes.

Q. And the foreman appears alone and without representation, doesn't he?

A. Well, I wouldn't say he appears alone without representation. There are other foremen as a rule or labor relations men appear with him.

Q. They appear with him. I am talking about somebody appearing for him, in the same sense that the steward appears for the hourly rated man.

A. I believe the foreman is capable of appearing for himself.

Q. So you feel that he is able to appear for himself under those circumstances?

A. Yes.

Q. As a matter of fact, aren't foremen now regularly and haven't they been for some time, taking their five or six days off as a penalty and refusing to go in and assert their innocence or even try their case? Isn't that the rule now at Packard's?

A. No.

Q. Well, hasn't it been for some time?

1581 A. No, I wouldn't say that.

Q. Isn't the reason that the Company at Packard's for a long time has adopted the policy of standing with the steward and the maintenance and production worker and against the foreman?

A. No.

Q. That as a consequence of that, Mr. Patzkowsky, the foremen are taking their medicine rather than even try the merits of the dispute?

A. I disagree with that.

Q. You do?

A. Yes.

Q. Do you know a man by the name of Kenneth Warden?

A. I know of him.

Q. What grade of foreman is he?

A. What grade?

Q. Yes.

A. I couldn't say.

Q. What?

A. I couldn't say.

Q. But he is a foreman, isn't he?

A. Yes.

Q. He is off right now on exactly the situation that I described?

A. I believe so.

1582 Q. Yes, sir. Where he refused to go in and even try to defend his case because of the consistent policy of the Company of standing against the foremen?

A. That is wrong. He appeared in a meeting with several different people. He was represented by his immediate supervisor. He was represented by the labor relations people, more than one.

Q. That is the last man that you have had in a meeting of that kind as a foreman, is that right?

A. That happened last week, I believe.

Q. As to suggestions, do you have in effect out there, and have you had since the United States went into the war, a Work-to-Win Program?

A. About that time it was put in, I guess.

Q. Well, we won't debate the time. It has been in effect for some period now, hasn't it, Mr. Patzkowsky?

A. Yes.

Q. That is a plan under which anybody in the plant can make a suggestion or a recommendation for the betterment of things, isn't it?

A. Yes.

Q. So, you don't have to be a foreman, do you, to make those recommendations and suggestions?

A. Well, I would call them suggestions. They certainly aren't recommendations. They are usually very

1583 much in their infancy, as a rule turned over to the foreman first for his consideration, and then he passes them on to the—perhaps the right people that will or can elaborate on them, if he approves of them.

Q. Well, but suppose a maintenance and production worker, suppose you are a maintenance and production worker and you hand it in to the president and pass everybody by?

A. He doesn't hand it. They all go to a central clearing place and then the work-to-win committee.

Q. And that is a joint management-labor committee?

A. Yes.

Q. What have the foremen to do with that committee and its scope of operations?

A. Well, the—I don't know exactly what they are.

Q. Let me first ask you then, if you don't know, let me suggest some specific inquiries. Is there a foreman on the committee?

A. I don't believe there is. At one time when I was a general foreman, I acted on that committee at alternate times, five or six times a year. We have changed that procedure. We have changed that procedure several different times. I couldn't say at the present time if there is a foreman on that in those meetings at one time or not.

Q. Well, that is a plan of operation specifically as operated at Packard's between the Union, representing
1584 the maintenance and production workers, and the Company, isn't that it?

A. Yes.

Q. And the foremen are subject to whatever rules or regulations grow out of that Work-to-Win Program, aren't they, and subject to the demands of the program?

A. If it is adopted as a rule, yes.

Q. They are expected to forward or aid in the work of the Work-to-Win Program, aren't they?

A. Sure.

Q. Without any voice in it whatsoever?

A. Oh yes, they have plenty of voice in it.

Q. What, for instance?

A. As I say, at different times the foremen have been on the Work-To-Win Committee.

Q. Who besides yourself now, while you were on it?

A. Well, Oscar Padget was one.

Q. Who?

A. Oscar Padget.

Q. Is he a manager now?

A. Yes, he was a foreman at that time. And Arthur Lynch.

Q. Where is he now, what is his rank now?

A. Mr. Lynch is a general foreman.

Q. In G. Division?

A. Yes.

1585 Q. How long was he on the committee?

A. As I say, we acted on this committee at just one meeting, and then we would skip several meetings and drop back into it again. The Work-to-Win Committee doesn't amount to much other than segregating the suggestions and in sending them into the proper channels where they are acted upon. The Work-to-Win Committee doesn't make any decisions.

If it is a suggestion pertaining to plant layout, it will be shipped to the plant layout department, and they will investigate it and give their answers back. If it is approved, put into effect, it is sent back to the Work-to-Win Committee, stating such, and the individual who put in the suggestion will receive his award.

If it is not approved, it is sent back the same way and the Work-to-Win Committee notifies the individual that put in the suggestion, stating the reasons why it wasn't approved.

So, as far as the functioning of the Work-to-Win Committee on acting on the suggestions is concerned, it is practically nothing.

Q. Well, it is still in operation, isn't it?

A. Oh, yes. You have got to have someone to determine where these suggestions should be sent to, if approved, where they should be sent for approval.

Q. I notice all these inter-departmental communica-

1586 tions that you offer from the files from the Company have that conclusion, "Work-to-Win". It seems to be a kind of a slogan in the Company.

A. It is.

Q. And you say that it doesn't amount to very much?

A. As far as the committee acting upon the suggestions, I say, it does not amount to much.

Q. Well, then, it is window dressing, isn't it, and slogan, only sound in appearance without substance?

Mr. Donovan: Oh, I think he is arguing with the wit-

ness, Mr. Trial Examiner. It is the same thing as "buy bonds."

Q. (By Mr. Nelson) Is that your idea?

A. No.

Q. That is not your idea?

A. No.

Q. Well, I will ask you, Mr. Patzkowsky, while we are on that subject, whether you regard the problems of the Work-to-Win Committee in the Packard Company as a genuine labor-management experiment, yourself, is it your opinion that it is?

A. Is has been very beneficial.

Q. Very beneficial to the Company?

A. And to the workers.

Q. And to the workers?

A. Yes.

1587 Q. Is that right?

A. Yes, and to supervisors.

Q. What benefit could you say a supervisor derived out of it?

A. Well, there are times when a supervisor thinks and perhaps he is too busy to stop and listen to a worker's suggestions. Perhaps the worker doesn't want to take the time to explain his suggestion to his supervisor. Perhaps it takes time to make a sketch, and he may do that on his own time, turn it in and the result is it gets back to the foreman. We have had cases—

Q. (Interposing) Gets back to the foreman from where?

A. From the Work-to-Win Committee.

Q. Oh, Goes up to the top and then comes back to the foreman?

A. Well,—

Mr. Donovan: (Interposing) I will object to that.

Q. (By Mr. Nelson) Is that right? I want to know.

Mr. Donovan I will object.

A. I don't know.

Mr. Donovan: Wait a minute. I object to the counsel's remark, "Goes up to the top." There is nothing in the evidence to justify that characterization of the Work-to-Win Committee. It carries an unfavorable inference

against the foremen, attempts to submerge the fore-
1588 men in an unfavorable light. I object to the ques-
tion, Mr. Trial Examiner.

Trial Examiner Jaffee: Well, as I understood the question, he is just asking the witness.

Mr. Nelson: That is all. He can say it isn't so or tell me where I am wrong.

Mr. Donovan: His question includes the statement that I object to.

Trial Examiner Jaffee: He may answer.

The Witness: I can't understand what you mean by "up to the top" and back to the bottom again.

Q. (By Mr. Nelson) Well, the foreman and the worker are side by side at the bench, we will say, or the machine, is that right?

A. Yes.

Q. That is the general idea of it?

A. Yes.

Q. Now, the Work-to-Win Committee is a plantwide committee, isn't it?

A. Yes.

Q. Now, as you said a moment ago, that was intended to head up and form a focus to gather all of the suggestions, isn't that so?

A. That is right.

Q. And suggestions there go directly to Manage-
1589 ment, don't they, when made to the Work-to-Win Committee?

A. They go from the Work-to-Win Committee to the Management.

Q. Certainly, because Management is half of it, isn't that so?

A. Sure.

Q. Well, all right. Now, will you tell me what benefit you think it is to a supervisor to set up a committee of that kind so that they can conveniently and properly by-pass the foreman, just what does that do for a foreman?

A. Well, as I have stated, as I have started to state, in some cases we have had some very good suggestions—

Q. (Interposing) I am not talking about the merits of the suggestions.

Mr. Donovan: I think you should let the witness finish his answer. He is answering your question. Give him time to finish.

The Witness: And the individual working for a foreman couldn't speak English. He had to have someone else interpret for him and put it onto a piece of paper, and he turned it in to the Work-to-Win Committee. In turn, the Work-to-Win Committee sent it back to the foreman for his investigation and his comments, and if the foreman approves of it, it would help his job or he wouldn't approve of it, and in that way it makes his easier
1590 or he certainly wouldn't have an interpreter for this individual, and he carries out the suggestions of the individual which may have taken hours for him to explain in his broken English out in the shop.

Q. Well, if the situation is that bad, there is some doubt about whether that man and that foreman can get along on the day's work, isn't there?

A. No, I wouldn't say that.

Q. If he needs an interpreter to the extent where he couldn't give him an idea—

A. (Interposing) A lot of people need an interpreter to express themselves, but yet can do a very good job of following instructions.

Q. Who picks the leaders?

A. You mean the leaders as we call them?

Q. Yes, I am using the leaders.

A. A definite classification?

Q. Yes.

A. The foreman or the immediate supervisor.

Q. Has the leader any supervisory function or authority?

A. As far as people are concerned, no, other than instructions of operating methods.

Q. As I understand it, you don't include instruction as a supervisory function, am I right about that?

A. That is right. Generally speaking, as far as
1591 instructions of operation on any particular details according to our operation sheets, that is usually taken up by the utility men or leaders.

Q. Now, the job setter also has something of an instructional function, too, hasn't he?

A. That is right.

Q. So far as the job setter is concerned, you don't consider instruction as supervisory in its nature?

A. No, I would say it was more of a teaching nature.

Q. Why do you include instruction when you mention the manifold duties and responsibilities of a foreman?

A. Well, someone has to instruct the job setters and leaders.

Q. In other words, it depends on who performs the function of instruction whether it is supervisory in its nature or not, is that correct?

A. Yes. One of them deals with tools and the other one deals with people.

Q. When the job setter comes along and shows a workman how to set it up and do it, he is dealing with those tools and people and material, isn't he?

A. Yes.

Q. In the office of instruction?

A. Yes.

Q. When the leader does the same thing, he is dealing with all four of those elements together, isn't he?

1592

A. That is right.

Q. And in the form of instruction?

A. That is right.

Q. What is the difference when the foreman does it?

A. The foreman isn't actually performing. It is a different method of teaching. The one is teaching, you might say, a skill, where the higher supervisor would be directing the working force of the people and the whole period.

Q. Well, then, as I get your answer, it depends upon the form of instruction, is that right, whether it is merely oral and subjective or whether it is objective as by way of demonstration, is that the difference?

A. That should cover it.

Q. That is the line of departure as you think?

A. Yes.

Q. Now, as I understood the testimony here, Mr. Patzkowsky, these leaders, if they show other characteristics and qualities, are selected and sent to a training school for foremen, aren't they, or given some instructions?

A. Leaders?

Q. Yes, or are sent in with the foremen at these meetings?

A. I don't know of any of the leaders ever being sent in with the foremen.

Q. Do you recruit foremen from leaders?

1593 A. What is that?

Q. Do you recruit foremen from leaders?

A. Yes.

Q. Do you give the leaders any instruction or special opportunity before they become foremen?

A. Well, it is a stepping stone, and as a rule, just prior to his being made an assistant foreman, we usually give him instructions at that time, how to—what we expect of an assistant foreman or a foreman.

Q. Who selects him?

A. Well, if it is an assistant foreman, the foreman usually selects him in his particular group, if he knows his group well.

Q. You mean he recommends him?

A. Yes.

Q. So far as you yourself are concerned, you have definitely more experience and training than the average general foreman, foreman or assistant foreman, haven't you, Mr Patzkowsky?

A. Perhaps in some lines.

Q. Well, I understood you to say you had been to college and presumably you got a degree, didn't you?

A. No, I have no degree.

Q. What degree did your studies generally lead to?

A. What would it lead to if I had finished up?

1594 Q. Yes, if you had finished the course you were on?

A. Well, the Teacher's College, you get a life certificate.

Q. As a teacher?

A. Yes.

Q. Did you specialize in manual training, the sciences and things of that kind?

A. Just in manual training.

Q. Just in manual training?

A. Yes.

Q. You would have finally gotten perhaps a B.S. if you had broadened and continued your studies?

A. Well—

Mr. Donovan: (Interposing) Well, if he had broadened that, he might have gotten an M.A.

Mr. Nelson: He might have, and he might yet.

The Witness: That is the thing, I broadened them so far that I would have to get an engineering degree. That would be the easiest way out of it if I had finished.

Q. (By Mr. Nelson) A general engineering degree?

A. Mechanical engineering degree.

Q. Mechanical engineering degree?

A. Yes.

Q. How many years did you go?

A. At Kalamazoo I went three years and two summer schools, and since that time I have gone at odd times a couple full semesters and part time work for several years.

1595

Q. You apparently didn't bother to drive straight for a degree; you took the work and sat contented with yourself in that?

A. That is right.

Mr. Nelson: That is all.

Trial Examiner Jaffee: Ten minute recess.

(Recess.)

Trial Examiner Jaffee: The hearing is in order.

Q. (By Mr. Karasick) I believe, Mr. Witness, that you testified with respect to Company's Exhibit 24 and on March 1, 1942 there were certain salary increases and other benefits granted foremen, is that correct?

Trial Examiner Jaffee: Is that in connection with—

Mr. Karasick: (Interposing) Mr. Examiner, that is Company's Exhibit 24, not Petitioner's Exhibit 24.

The Witness: I do not recall if there was tied up with that in any exhibit or not—if that was tied up in any exhibit or not.

Mr. Dahling: I think he testified that there were certain overtime arrangements made for foremen at that time.

Q. (By Mr. Karasick) I hand you a copy of Company's

Exhibit 24 and ask you if that is the document with reference to the change you testified to?

1596 A. Yes.

Q. The salary increases and the other benefits granted at this time, as referred to in Company's Exhibit 24, were increases and benefits which were granted to both exempt and non-exempt employees under the Fair Labor Standard Act, is that correct?

A. I believe they are.

Q. The exhibit itself so states?

Mr. Dahling: I think that has been completely covered, Mr. Examiner, hasn't it? The exhibits, of course, speak for themselves.

Q. (By Mr. Karasick) I believe you also testified that foremen attended conferences with respect to these changes which were granted?

A. Yes.

Q. Did all the foremen in the plant attend these conferences?

A. I was a general foreman at that time. The foreman at that time, all the general foremen of the division met with the division manager and all the foremen and assistant foremen that worked for me met with me and I carried on the message in a two-way communication, you might say. There was a matter of two or three months that that thing was being discussed back and forth.

Q. Were these conferences—what was the purpose

1597 of these conferences? To inform them of the contemplated changes?

A. Well, if I remember correctly, at one time there was a plan to pay supervisors on a straight hourly basis and a lot of the foremen preferred that at that time. Naturally, if you are going to pay for overtime, that seems to be the easiest way of computing the wages earned. I know that was brought up with the division manager and at the same time it was brought out that if you missed a day during the week and if you worked on Saturday or Sunday—how the wages would be computed for that. That was kicked back and forth until everyone was presumably satisfied.

Q. Was my understanding correct, that these contem-

plated increases in salary and benefits were drafted and then the foremen, through conferences—I mean foremen of all grades—through conferences at one time or another, were informed of the changes contemplated and the changes that would go into effect?

A. That is right.

Mr. Dahling: Mr. Examiner, I do not think Mr. Karasick means to mislead the witness. He testified as to conferences only in the division where he was a foreman. I think that was what the witness had in mind.

The Witness: Yes, I am speaking of myself and the conferences in which I was directly connected.

Q. (By Mr. Karasick) So as to the other foremen
1598 you do not know?

A. I speak of the general foremen of the division I was in, the foremen working for me. Being a general foreman at that time, I was not familiar with how it was carried on in the rest of the plant.

Q. I believe with reference to the exhibit which shows on its face an indication that the Company desired the foremen to take up and the Union steward to take up grievances from the lower step to the higher stage in connection with that exhibit, you testified that the stewards wanted to go to the top and that it was necessary to indicate to them that they had to start at the lowest level and work up?

A. That is right, they weren't sticking to procedure.

Q. Why did the stewards want to go to the top?

A. Why?

Q. Yes.

A. There may be a number of different reasons. Really, I could not say, other than for political reasons of their own. They are by-passing their own district stewards when they are doing that. Maybe there was a feud between the district steward and themselves and they may go around the division to try to get something to gain their own political ends.

Q. Was it perhaps the finality of the decisions arrived at at the top stage of the grievance procedure which
1599 would induce the stewards to want to go to the top?

A. I don't believe so because there were too many

times when they might get knocked down on it, you might say, and they would suffer defeat rather than gain their end.

Q. Is this your surmise or do you know that it was so?

A. I cannot speak for a steward, but naturally, it would be so knowing the actual happenings and assuming—I am assuming what might be going on in a steward's mind.

Q. Did any steward ever tell you?

A. Yes, stewards have made the crack that they were out to get the next election, plenty of times you find that true. That is strictly political, you know.

Q. You mean that in the sense that they wanted to be successful in the presentation of their grievances?

A. That is right.

Q. They did want to take them to the top and had to be told to start at the bottom and work up?

A. If they could gain something, they could get an answer back to their boss, you might say.

Q. Now, with reference to the shop rules and penalties for violations which is in evidence as Petitioner's Exhibit 24. I am not sure whether I understood you correctly to say foremen fixed the penalties of violations of rules not listed on that exhibit. When you so testified, if you did so testify, you meant within the regular limits that the

1600 foremen have of recommending actions which are then passed on up the line until final approval is had, is that correct?

A. Yes.

Q. Are foremen regularly represented on the Work-to-Win Committee, or do they serve on that committee only sporadically?

A. I couldn't say for sure.

Q. How large is the committee?

A. I think there are three of each.

Q. Three of each what?

A. Three from Labor and three from Management.

Q. And the three from Labor would be the rank and file represented by the UAW in the plant?

A. Yes.

Q. And three from Management?

A. Yes.

Q. I see.

Mr. Karasick: No further questions.

Trial Examiner Jaffee: Anything further from the witness?

Mr. Nelson: No questions.

Mr. Dahling: No questions.

Q. (By Trial Examiner Jaffee) Mr. Patzkowsky, am I correct in assuming that leaders are covered by a UAW contract?

A. Yes.

1601 Q. May I see that list of foremen attributes, or whatever it is called? Mr. Witness, you testified, I think, that you agreed with Mr. MacAuley's list making up his conception of the analysis of a foreman's job?

A. Yes.

Q. Which Mr. MacAuley read into the record?

A. Yes.

Q. And you recall that the list in substance was an itemized list of certain responsibilities?

A. That is right.

Q. To Management, to the workers, and thereby to Management and his responsibilities in connection with tools and equipment and thereby to Management and so on?

A. That is right.

Q. Have you an opinion, Mr. Patzkowsky, as to what the effect on these responsibilities would be if foremen were organized into a union and were recognized by the Company, if the Company recognized such a union of the foremen? First, the question is, have you an opinion?

A. Yes, I believe I have.

Q. Can you point out which of the items on that five-page list—let's say some of them, because the list is very long—which of the items you think might be affected adversely, if you so think, by the fact that the foremen were organized into the Foreman's Association of Amer-

1602 ica and the Company recognized that Association as their representative?

A. You say from this list?

Q. Yes, just pick out a few illustrations, you do not have to take them all.

A. Well, of course, according to this, he is responsible to the Management for production. In our past history of Unionism, it tends to stop the individualism of a person and he certainly would not attempt to increase production as he has previously had and as in the testimony which has been brought out here previously, the better workers do not produce any more than the average workers and if that held true, as it always has in the past with unions, that would have a tendency to cut down production in individual departments.

Q. Now, by the "past history of Unionism" what in general do you refer to?

A. Well, I think I can bring that down to Packard.

Q. Perhaps I can save some time. Do you refer to rank and file Unionism?

A. Yes.

Q. What you have said, then, would be a reason, would it not, or would it, why there should be no union among the rank and file in Packard.

A. As far as the individual is concerned in his progress and creative nature, as far as that is corcerned,
1603 he perhaps would be better off without a union. You see, at the present time, I might give you an illustration—at the present time if you get an excellent mechanic as a production man and he would like to transfer to the mechanical division and become a toolmaker and he has had five or six years seniority as a production worker, going from one machine to another learning machining methods and becoming a good mechanic and gaining experience—when he gets transferred in case he does, he does not retain all his seniority as a mechanic in the mechanical division, that he has gained at the Packard Motor Car Company as a whole and it ends up being a temporary job. If it weren't for the Union, he may go in as a toolmaker and become a Grade A or topnotch toolmaker and remain there.

Q. That is because—I may be wrong about this—is that because of the operation of the particular contract you happen to have with the UAW?

A. Oh, I presume it is that, and it is seniority rights.

I do not know of a contract in the industry that does not have seniority rights in its contract..

Q. Well, seniority or what you refer to as seniority "rights" are arrived at as a result of collective bargaining between the Company and the UAW, isn't that a fact?

A. Yes.

1604 Q. So that to an extent, am I correct in assuming, both the UAW and the Company have had a hand in creating those rights, to that extent?

A. Of the Company being forced into it. That has always been a main issue because it is the average number of people or the majority of number of people and workers that agree to that one. That is why it is taken into consideration. Now, when your supervision, which is a small percentage of the total number of workers that we have, and we have picked the choice from the rank and file—they certainly should be allowed to express their creativeness to make work easier and more efficient than other people so that by those methods they can advance themselves.

Trial Examiner Jaffee: Well, now, am I correct then, in gathering from your testimony that, speaking generally, you think Unionism deters initiative and individual ambition?

The Witness: I agree with that.

Q. (By Trial Examiner Jaffee) Is that the reason why you think that foremen at Packard's should not belong to the Foreman's Association, and that Packard should not recognize the Foreman's Association?

A. That is my belief.

Q. Is that the only reason?

A. Well, of course, you could assume what may

1605 happen, if that did happen, which you have assumed, our training program would have to be changed. Of course, that is assuming again, I can't imagine of one being supervised by another one as foreman or as assistant foreman belonging to the same Union. Perhaps someone would want to discharge, we will say, a general foreman and you may be called upon, the representative or the steward of an assistant foreman, or an assist-

ant foreman to pass on the qualifications of the general foreman. Now, I don't think that would be fair to the individuals.

Trial Examiner Jaffee: Well, do you think a steward is a steward of an assistant foreman or is he a steward for the entire department?

The Witness: I figured he would be a steward for the entire department.

Q. (By Trial Examiner Jaffee) Well, all right. Then, am I to understand that as far as you are concerned so far, we have two reasons why you think foremen shouldn't be recognized or organized into the Foreman's Association or recognized by Packard; namely, one, it lessens individual initiative, and, two, the rank and file and the foreman, using the term generally, should not be in the same union?

A. I didn't mean to say rank and file. I meant to say that supervisors in different grades would be in the same—you see, an assistant foreman is supervised by a

1606 foreman and a general foreman.

Q. Yes.

A. Those three people have different grades, and a special assignment man, perhaps, working for a general foreman. He would have three different people working directly for him, and yet they belong to the same Union.

Trial Examiner Jaffee: Let's take the case simply of the assistant foreman and let's forget for the time being the foreman, the general foreman and the special assignment man. Do you think it would affect any of the attributes listed in those five pages which have been read into the record to have the assistant foremen alone in the Union of their own?

A. Well, as I stated before, it is still the same as far as the individual is concerned. You would tear down his initiative to advance, and as he is the direct supervisor or manager of the department, the industry as a whole would suffer. We wouldn't be progressive and as soon as you aren't progressive, why, the public will suffer, the cost is going to increase and your standards are going to decrease or be lowered.

Q. Why are employees in the rank and file promoted to the job of supervision?

A. Why are they?

Q. Yes.

1607 A. Well, I would best answer that because we can't get them from anyplace else.

Q. How is it you pick individuals for promotion rather than among the rank and file?

A. Well, in some cases the individuals have shown and told us or expressed to us that they would like to show their initiative and do a bigger job, and they have been more or less handicapped as the rank and file worker to do any of that, yet, nevertheless, by talking to the foreman, becoming acquainted and expressing what he would like to do and showing us his utmost ability on the job that he has, presumably why a job setter, I am speaking of machine shops now, and those people with the experience in that particular line of work are the ones that are entitled to be promoted to a supervisor's job.

Q. In showing, to use your phrase, in showing the utmost ability on the job which he has, would he thereby, at least in some cases indicate a degree of initiative?

A. Yes.

Q. An individual ambition?

A. Yes.

Q. Am I to understand then, that it is from that desire as expressed to his superior, which is generally the basis for advancement?

A. Yes.

1608 Q. So that, does it not come down to this then, that you think the assistant foreman should not be organized into a union of their own, limited to them alone, because you think it would deter or lessen their individual initiative?

A. Yes.

Q. Now, I want to point out something to you, Mr. Patzkowsky, and I want to point it out to you because I want you to appreciate any possible implications in your answer.

Your previous testimony along the same line, so far as it appears as to rank and file, would indicate, whether valid or not—I am not passing on that point—would indicate whether valid or not, a reason why rank and file should not belong to the Union.

Now, as far as assistant foremen are concerned, you have indicated only that reason, if I understand your testimony correctly.

A. That is one of the reasons.

Q. Well, what other reason is there?

A. As I stated, that it would—in that particular group, you wouldn't have progressiveness in the department in itself. Now, you have overlapping assistant foremen, you have an assistant foreman that is in charge of production work. In the same department you may have an assistant foreman who is an assistant foreman of inspection which is the control of the standards. The standards may
1609 get to the very low point and the inspection foreman never notify anyone concerned that they are right on the ragged edge. You have assistant foremen in the tool repair, and the same thing may carry on from them, the same as machine repair. So, from that point, as it has always in the past, Union men protecting one another, shielding one another, it certainly wouldn't improve the product if conditions were such.

Q. How do you know?

A. Well, we are just assuming these things. As I say, from the past history of it, we know that Union men shield one another.

Q. Well, do you mean the past history of the UAW?

A. Yes.

Q. Well, we have had the Foreman's Association in there—I don't mean recognized—but it has been in there or at least, the foremen have been members of it in your plant for how long?

A. I couldn't say definitely for how long.

Q. Can you say whether or not the fact that they are members of the Foreman's Association at Packard has adversely affected their jobs; that is to say, has adversely affected the manner in which they did their work?

A. At times I believe it has.

Trial Examiner Jaffee: Can you illustrate?

1610 A. Well, when they were out on strike, it certainly didn't help their job any.

Q. Other than that?

A. At times it has looked very suspicious when parts

got onto the assembly line that were passed through inspection by the inspection people, that there may have been good will between the production and inspection foremen.

Q. Have you any evidence to support that beyond the fact that you indicate a suspicion?

A. No. That would be quite hard to trace down.

Q. Anything else?

A. No, I don't believe so.

Q. So, we have then, the strike and the suspicion?

A. Yes.

Q. Now, if I understand the Company's claim correctly, it claims that the strike of last April or May of 1944 was a strike by the Association for recognition, is that right?

A. I believe so.

Q. To that extent, then I would assume—if I am wrong you can correct me on it—if the Association had been recognized by the Company, of course, that means obviously there would have been no strike for recognition, at least there would have been no occasion for it. That follows?

A. That is right.

Q. Now, is there anything else you want to add to
1611 any of the answers that you have given or to any of the questions I have asked?

A. I don't think so.

Mr. Dahling: I think the witness should be given an opportunity. The subject gone into is a subject that has not been brought out before, and you are asking him to go through a long list and state certain things.

Mr. Patzkowsky, have you been a witness before? Have you had any experience in a case?

The Witness: No.

Mr. Dahling: This is your first appearance?

The Witness: That is right.

Mr. Dahling: I believe the witness should be given an opportunity to examine into this matter now. Apparently, Mr. Examiner, you are going into the whole question of the possible effect of the unionization on the Company. That is the unionization of the Foreman's Association, which is a very broad subject and on which this witness,

if he is to testify, should have an opportunity to prepare himself.

Trial Examiner Jaffee: I have no objection to that at all.

Mr. Dahling: So, I don't believe he should be asked at this present time on the stand if he has anything further to say until he has a chance to look into it somewhat and look it over.

1612 Trial Examiner Jaffee: Naturally, my question asking the witness whether he had anything further means has he anything further to say at this time. I appreciate the fact that the question is a difficult one. It wasn't asked by other counsel of this witness and I have no objection at all. I think it is perfectly proper for him to come back at some subsequent stage of the proceeding and add anything else he cares to add on that subject. It is not an easy matter at all.

Mr. Nelson: I would like to ask the witness a couple of questions at this time.

Trial Examiner Jaffee: All right.

Mr. Nelson: On which he is informed, I assume.

Q. (By Mr. Nelson) I am not complaining that you are not a good witness, Mr. Patzkowsky. I should think they would be satisfied.

Mr. Dahling: I think Mr. Patzkowsky is a very good witness for the purpose for which he was called, but I think this new subject being brought up the way it was, the witness should have an opportunity to look into it somewhat and crystallize his ideas on it.

Trial Examiner Jaffee: That is perfectly all right.

Q. (By Mr. Nelson) Now, in this Packard Plant, there has been at all times since the start of the program

1613 they are working on now, Army and Navy inspection, hasn't there?

A. Yes.

Q. And the plant is fully protected by the FBI and other policing agencies?

A. Yes.

Q. It has its own policing agencies, doesn't it, is that right?

A. That is right.

Q. And any wilful interference with production there you would recognize as an offense, wouldn't you?

A. That is right.

Q. And that is generally known in the plant, isn't it?

A. Yes.

Q. Certainly known to the foremen, isn't it, that any sabotage of the war effort would be a serious matter?

A. That is right.

Q. You knew that as a foreman?

A. Yes.

Q. And it was common knowledge among the foremen?

A. Yes.

Q. Now, since October of 1942 the production of the Packard Plant has gone, I would say, steadily up, to make an understatement, actually it has gone up by leaps and bounds, hasn't it?

A. I wouldn't say that.

1614 Q. Well, then, let's be content with steadily.

A. I couldn't hardly say that. It all depends on what you mean by "production".

Q. Well, you have got 36,000 people out there now, and you had how many, about eight or nine thousand to start with?

A. In car division days, you mean?

Q. Yes.

A. Before the war, before we entered the program?

Q. Yes.

A. Yes.

Q. But, of course, it has gone up even compared to those figures, hasn't it, production has steadily gone up?

A. We have consumed more man hours.

Q. And you have put out more production per man, haven't you?

A. No, I wouldn't say that.

Q. You wouldn't say that?

A. Not more production per man.

Q. Hasn't the award of the Army and Navy recognized that fact, and hasn't the award of the Army and Navy recognizing that fact been granted Packard?

A. I don't think they go into it in that consideration.

Q. Well—

A. (Interposing) Of course, you have no compari-
1615 son. If we were to start back building automobiles and we built so many per day with 8,000 people and then we put on 32,000 people and we built five times more automobiles than we did before and you would only increase the man hours four times, that would be a direct comparison.

Q. Haven't you done just that and better?

A. We have no comparison.

Q. Since October, 1942?

A. Until now?

Q. Right up until now. I will leave out the period of the strike.

A. I say, I don't know.

Q. You don't know?

A. You couldn't even compile figures to that effect.

Q. Well, the cold figures of production would more than amplify my statement and support it, wouldn't they, Mr. Patzkowsky?

A. No.

Q. Since you started the war program, hasn't your production gone right up to the height where you have even had to have cutbacks?

A. Perhaps I misunderstood you. I thought you made the statement that parts were produced per man hours.

Q. That is exactly what I mean ultimately by what I say. It is the truth, isn't it?

1616 A. I don't follow that one at all.

Q. Aren't you producing more engines, marine and this Rolls Royce?

A. With less people than we did in 1941?

Q. Let's take the absolute proposition. You are producing more engines, aren't you, than you did in October, 1942?

A. I don't think that is true generally.

Q. You don't think it is true?

A. No.

Q. The absolute figures?

A. No.

Trial Examiner Jaffee: You mean regardless of the number of employees?

Q. (By Mr. Nelson) Regardless of the number of workers, you are producing more engines, aren't you?

A. Not in the marine division. I think in 1942 we were producing more engines, I believe. I am not familiar with it, but I believe in 1941 more engines were produced than we are producing at the present time.

Q. Then you are not familiar with the production out there at all, are you?

A. Oh, yes.

Q. You are?

A. Yes.

Q. Have you had a cutback lately in the marine division?

1617 A. We had several.

Q. You have had several. Up to the time you had the cutback, the first cutback in the marine engine division, didn't you steadily increase production in marine engines?

A. Oh, yes.

Q. Now, you are still producing your full quota of Rolls Royce airplane engines?

A. No.

Q. Have you had cutbacks on that?

A. Yes.

Q. When did you get the first one?

A. I think September 1st.

Q. Of 1944?

A. Yes.

Q. And up to the time you had the first cutback in the Rolls Royce engines, you had steadily increased production, hadn't you?

A. Yes.

Q. Now, as a matter of fact, you had increased production per man up to that time, per man employed, hadn't you?

A. I wouldn't say that honestly, whether we have or have not.

Q. What is the matter with that statement? Isn't it true?

A. We have no figures to base your theory on from these

operation sheets. If the standard hours were cut
1618 universally throughout and we knew exactly how many standard hours were cut off the entire engine, yes, but during the period, we just have estimated times which weren't standard times, and we haven't as yet even completed the entire time study on the Rolls Royce engine on all its detail parts. So, we can't say that we have produced more per man hour than when we started.

Q. You are apparently not willing to say that although the Foreman's Association has been organized nearly one hundred percent from October, 1942 to the present in the Packard Plant—

Mr. Dahling: (Interposing) There is no testimony to that effect. It shows you have 872 out of some 1100 or so.

Q. (By Mr. Nelson) All of the people that we want in. We have about 98 percent, Mr. Patzkowsky.

Mr. Dahling: I don't think there is anything in the record to that effect.

Mr. Nelson: I think there is.

Q. (By Mr. Nelson) And you are not willing to say that production has gone steadily up with that situation existing among the foremen in the Packard Plant?

A. No.

Q. No?

A. I base my answer—

Q. (Interposing) Do you want to explain that answer?

1619 A. Just a little bit. We receive periodic reports from the Government so far as loafing conditions are concerned in the plant and they tell us that we have not improved in the last two years.

Q. You haven't improved?

A. That is right.

Q. You charge it to the organization of the foremen?

A. No, not necessarily to the organization.

Q. Any part of it to it?

A. No.

Q. Now, would it have been any worse if the Company had recognized the foremen and dealt collectively with them, in your opinion?

A. It could have been.

Q. It could have been worse?

A. Oh, yes.

Q. Well, I asked you for not a possibility but an opinion, if you will venture one?

A. We have had difficulty in the foremen of stepping up to their responsibility to take their responsibility, due to any inexperience of some of the new ones, if they knew that they were being protected and cared for by a union, perhaps wouldn't try to advance themselves and to create better human relations, to produce more and a better product.

Now, we have quite a few people that have been
1620 put onto the roll as a supervisor that are taking night courses and educating themselves on their own time to do a better job for us, and, of course, it is kind of hard-hearted to say, because we might be afraid of the axe, but at the same time if they were being protected and knew that no one else was producing, they might sit back—I say, "they might"—sit back and know that there is no use replacing them because the next fellow that would come along would operate the same way that they have been operating.

1621 Q. (By Mr. Nelson): Now, have you had and do you have or rather, have you had for the past two years and four months and do you now have a competent set of foremen, generally speaking, at Packard's?

A. Generally speaking, I would say yes.

Q. I don't mean anything absolutely overwhelming but the foremen as a rule are competent and sincere and sincerely devoted to their job, at Packard's, is that a fact?

A. If you are asking for facts—

Q. I am asking for facts and nothing else.

A. When I was general manager I was told by a foreman that he could take off as much time as he pleased and he could run around with people that were working for him as much as he pleased, because the Foreman's Association would protect his job.

Q. Would you like to give us that man's name?

A. If you care to have it, but he is not with Packard's any more.

Q. I would like to have his name.

A. His name is Mayday.

Q. When did he tell you that?

A. Approximately a month after the Foreman's strike.

Q. Now, I want to come back to my question which is, whether in your opinion a foreman, in your expe-

1622 rience, the foremen at the Packard plant have been for somewhat over two years and are now a definitely competent set of men for that purpose?

A. For what purpose?

Q. For the purpose of supervising the Packard factory?

A. Yes, they have been that for years.

Q. They have had a competent supervisory force and they have one now?

A. I would say so.

Q. Will you tell me what you would suggest as the reason why those men individually or collectively would receive any benefit or credit for protecting an incompetent or dishonest supervisor out there? Just what benefit would they receive from a program of that kind?

Mr. Donovan: That could come back from a Union man who could tell what objectives they had. All this man sees is the results. You better question some Union man about that.

Mr. Nelson: I am asking him, he is on the stand, let him suggest.

Mr. Donovan: You are asking him something that goes on in the mind of a Union man for his several objectives. He is not able to answer that.

Trial Examiner Jaffee: He may answer.

The Witness: I wouldn't know.

1623 Q. (By Mr. Nelson): You cannot think of any benefits that they would get out of a program of that kind?

A. I never gave it much thought.

Q. Mayday was discharged?

A. Yes.

Q. Did the Foreman's Association interpose any objection whatsoever to his discharge? They didn't, is that correct, is that the fact?

A. Perhaps because they did not have anyone to interpose their objection to.

Q. And well, perhaps they did not like that kind of foreman. Wouldn't that be another, perhaps, Mr. Patzkowsky?

A. Well, they had to take my word for it and they did interpose for him.

Q. They did interpose for him? You are then changing your answer now?

A. No.

Q. Who interposed for Mayday?

A. Another representative.

Q. Who do you mean now? Well, we will have to have more names, now that you have given us Mayday and said that somebody interposed for him. Who interposed for him?

A. Charles Hardan.

Q. Was Hardan at that time an officer of the Fore-
1624 man's Association of America?

A. I couldn't say.

Q. As a matter of fact, he has never been an officer, to your knowledge, isn't that so, Mr. Patzkowsky?

A. No, to my knowledge, no.

Q. Of course not. Was he a friend of Mayday's?

A. I presume so but I do not know he was a particular friend or not.

Q. You know the officers of the Association, do you not?

A. I would say I do not know all of them on the Executive Board.

Q. But you do know the prominent ones?

A. I believe Charlie was one of them.

Q. An officer of the Association?

A. I believe he had some minor job.

Q. Well, then, what job would you suggest he had?

A. I believe he was a representative.

Q. What kind of representative?

A. Of the Foreman's Association.

Q. What would you suggest by way of his office?

A. I don't know just how they do operate, he may have been a steward.

Q. Did he use the name of the Association in making a defense of Mayday?

1625 A. He said he would take it up with the other members of the Board, that was the statement he made.

Q. And that is what Hardan said?

A. Yes.

Q. And that is the only thing that happened by way of a defense of Mayday?

A. Yes, as far as I know, they may have contacted other people.

Q. Mayday was discharged and the discharge stuck?

A. Yes.

Q. And there was no disturbance by way of a strike or anything of the kind, was there, as a result of that discharge?

A. No.

Q. Has the Company cut the standard hours on the Rolls Royce engines since they started that program?

A. As a total?

Q. Yes.

A. I don't know, but I do not think so. As I said before, they have not completed the entire time study. I know that they have cut the standard hours on certain operations and they have increased the standard hours on other operations.

Q. Well, on the whole Rolls Royce, aren't the hours cut and cut by the Company, the standard hours?

1626 A. I couldn't say. I don't think we even—

Mr. Dahling: You mean the hours per week that they are working?

The Witness: You see, Mr. Nelson, we have never had an entire time study on the Rolls Royce. If we are doing any time cutting it would be a cutting of a guess estimated time.

Q. (By Mr. Nelson): You have got an hour per engine allowance for the Rolls Royce, haven't you?

A. Estimated, yes.

Q. And that has been cut, hasn't it?

A. On some operations it is and on some it has been increased. As a general overall picture, I would not say whether it has been increased or decreased.

Q. You don't seem to think that the Company has much to boast about in the last couple of years out there in their program, do you?

A. I wouldn't say that.

Q. But it would be a distinct accomplishment if, for a man employed, the production went up, wouldn't it?

A. Certainly.

Q. And that is what has happened, hasn't it?

A. I don't know. I can say this, I doubt if there is anyone at Packard's that does know.

Q. You don't know whether it is a fact and you
1627 don't whether there is anybody that would know, so I could not call anybody else and ask them the same question?

A. No.

Q. What is the matter, don't they know what they are doing up there?

Mr. Donovan: I will ask that be stricken from the record. If counsel wants to subpoena any witnesses he can do so.

Trial Examiner Jaffee: Yes. "What is the matter out there?" and the answer that follows, if any, is stricken as argumentative.

Q. (By Mr. Nelson): Has there been a cut in price of engines by the Government?

A. I don't know a thing about the prices.

Q. That is something you do not know about?

A. No.

Q. I suppose that there would be somebody out there that would know what they are paying for them?

Trial Examiner Jaffee: I hope so.

The Witness: Yes.

Mr. Nelson: Who would that be?

The Witness: The Executive Vice-President.

Mr. Nelson: What is his name?

The Witness: James Marks.

Mr. Nelson: That is all.

1628 Trial Examiner Jaffee: Is there anything further from this witness?

Mr. Dahling: Not tonight, Mr. Examiner, I wonder if we can adjourn. It is now five o'clock.

Trial Examiner Jaffee: Yes, we will adjourn until 9:30 tomorrow morning, gentlemen.

(Whereupon, at 5:00 o'clock P. M., Tuesday, January 2, 1945, the hearing was adjourned until tomorrow, Wednesday, January 3, 1945, at 9:30 o'clock A. M.)

1629

Room 657, Federal Building
Detroit, Michigan,
Wednesday, January 3, 1945.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 A. M.

Before:

Samuel H. Jaffee, Trial Examiner.

1631

PROCEEDINGS.

Trial Examiner Jaffee: Gentlemen, are we ready to proceed?

Mr. Dahling: Yes.

ELMER G. PATZKOWSKY

resumed the stand, was examined and testified further as follows:

Redirect Examination.

Q. (By Mr. Dahling) Mr. Patzkowsky, yesterday afternoon you were asked certain questions with respect to how a foreman's responsibilities would be affected if he were a member of the Foreman's Association of America and if that particular Union was recognized by the Company and the Company was required to collectively bargain with it. I would like to ask you further questions along that line. Take this situation: Suppose all of your supervision, that is, the foremen of the three classes and the special assignment men belonged to the Foreman's Association and the Company was forced to recognize and collectively bargain with that Union, in your opinion,

could those foremen carry out their responsibilities to Management properly?

A. I don't believe they could.

Q. Let's take a few of the major headings on this list that has been copied into the record entitled "Analysis of a Foreman's job". In your opinion, if these
1632 foremen were members of this Union and the Company was forced to collectively bargain with them, could these foremen interpret the policies of the Company regarding the welfare, safety and adjusting of grievances and wages and promotions in a manner that you feel would be proper and satisfactory to Management?

Mr. Nelson: I don't see how that is a helpful opinion.

Trial Examiner Jaffee: He may answer.

Mr. Nelson: There are too many suppositious elements in it.

The Witness: In my opinion, if I was taking the decisions of the supervisors, I couldn't rely on them due to the fact that I would not know if he was making the decision for his own personal gain in his own Union or with the rank and file Union, which eventually, perhaps he would use for his own gain anyway.

Q. (By Mr. Dahling) In other words, you feel that if the situation I have described did exist as a fact, there would be the matter of divided loyalty between Management and the Foreman's Association of America?

A. That is correct.

Q. And consequently, you would not be able to rely upon the act and actions taken and the recommendations made by the foremen because you would not know whether the particular act or thing done was to foster the
1633 Union or to foster the interests of Management, is that what you meant by your answer?

A. That is correct.

Q. And I believe you also indicated that you felt that if the Foreman's Association of America was given collective bargaining, there might be some question as to whether you could rely upon your foremen in dealing with the UAW Union, because they might want to be on a

friendly relation and get the assistance of that Union at a later time when the Foreman's Association might need it.

A. I believe they would.

Q. Now, in your opinion, could you rely upon the actions of the foremen in rating the worker and making recommendations with respect to this worker in the UAW—say a recommendation to the post of assistant foreman?

A. I could not rely on it due to the fact that the basic principles of seniority in all unions seem to be present. I think he would be recommending the individual with the greater seniority rather than with the greatest ability.

Q. When you come to recommendations for promotions and transfers, would your same answers apply to that? That you would be fearful that he might consider seniority alone without ability?

A. Yes, it would.

Q. How about his responsibility for material and
1634 equipment? Would you feel that if the foreman was a member of the Union you could rely, to the extent that you have heretofore, on the matter in which he handled his materjal and handled his equipment?

A. With regard to material and equipment, it comes down to the cost control of running the department and in past dealings with the Union, they have disregarded cost entirely. The leaders of the Union, regardless of how good—

Trial Examiner Jaffee: By the way, which union?

The Witness: Well, the one I have had experience with is the CIO Union.

Trial Examiner Jaffee: Go ahead.

The Witness: With the Union, regardless how good the relationship with Management is, the leaders of the Union still make demands to help their members and with no regard for cost.

Q. (By Mr. Dahling) In other words, they want to keep their members working and that is their first objective and how much it costs the Company is secondary?

A. I doubt whether it is even secondary. It just does not enter as far as they are concerned.

Q. You feel that it is your opinion that if the Foreman's Association had collective bargaining, that it would not only be interested in working with the UAW Union, but also would be more interested in maintaining the
1635 employment of its members than cutting down costs for the Company?

A. I believe that would be correct.

Q. That would be your opinion?

A. That is right.

Q. In your opinion, what would be the effect of the unionization of foremen and the granting of the foremen of collective bargaining, on the foreman's responsibility to suggest improvement that might reduce costs in manpower?

A. Well, if it had anything to do with the reduction of the force—one of the basic principles of all unions seems to be the same and I believe that they would hesitate in making those kinds of suggestions.

Q. For the reason that it might affect the number of foremen that would be employed in the first instance?

A. That is right.

Q. And also it might affect the number of hourly rated men that were employed?

A. That is correct.

Q. That would be employed?

A. Yes.

Q. In your opinion, would you be able to rely upon the foreman in case this organization had collective bargaining, to manage his department in such a way as to bring about the highest production?

A. I don't believe he could.

1636 Q. In other words, it would be a question of your not being certain that he was exerting his best efforts for the Company?

A. He would have divided loyalty. If he knew the majority of his Union had other ideas, irregardless of what his own personal ideas might be, he would have to operate according to the majority of the members of his Union.

Q. In your opinion, when a union is organized and

given collective bargaining, does the same friendly attitude exist between the members of the organization and the Company, or is there a tendency for the organization and its members to become antagonistic to the Company?

Q. Well, in the past, the people that are in the bargaining agency for the Union have assumed an antagonistic attitude towards Management.

Q. Isn't that attitude reflected down through the ranks of the workers themselves?

A. That is right.

Q. As a matter of fact, these leaders have to be elected, do they not, in a Union?

A. Yes.

Q. That is according to the testimony in this case?

A. Yes.

Q. And it is necessary for them to make constant demands to keep in the limelight, let us say?

1637 A. Yes, and secure extra votes for the coming elections.

Q. To cement the Union, hasn't it been a fact, that the leaders have attacked Management?

A. Yes.

Q. And you feel that if the Foreman's Association were permitted to collectively bargain, the same thing might result as has in the past with the other Unions?

A. Well, their primary beliefs are the same and I could not believe anything else.

Q. That was so testified in this case, was it not?

A. I believe it was.

Trial Examiner Jaffee: What was?

Mr. Dahling: That the Union principles are the same as to the Foreman's Association of America as with the other Unions.

Q. (By Mr. Dahling) Mr. Patzkowsky, could you rely, we will say, on the foremen who were members of this organization who had collective bargaining, to see that the men remained on their jobs until quitting time and did not crowd the clock alleys, in your opinion?

A. In my opinion I would not be too sure that he would because he may be wanting to set a policy that would give an advantage to his own union.

Q. And also, might he not want to work with the members of the rank and file union in order to keep on
1638 a friendly basis with the Union?

A. Definitely so.

Q. And that would be one of the reasons why you feel you could not rely on the foremen properly carrying out that job that he had?

A. That is right.

Q. On the question of the responsibility to maintain discipline, you believe that if the Foreman's Association of America was organized and granted collective bargaining that you could put full reliance upon the foremen properly carrying disciplinary measures as to the rank and file union?

A. In my opinion I do not believe he would.

Q. In other words, you could not rely upon him in that connection?

A. I could not rely upon him, yes.

Q. He might, for the purpose of remaining on friendly terms with the other Union, and so he could get its assistance for the Foreman's Association or get its assistance later be lax in his application of discipline?

A. Yes.

Q. Under the present procedure, the grievance procedure, the foreman is the first step in Management that considers grievances of the workers. What is your opinion as to whether you could continue that procedure if
1639 the Foreman's Association was given collective bargaining rights?

A. I believe that particular step of the grievance procedure would have to be changed.

Q. And it would have to be given, as far as Management is concerned, to someone whose undivided loyalty was to Management?

A. That is right.

Q. There has been some testimony and some exhibits admitted in this proceeding with respect to the testing of materials. Take this situation: Say that you were testing some tools or materials that had been supplied to the Company by a concern that was then in a fight with the Foreman's Association over, we will say, recognition and

your foremen were members of the Foreman's Association of America and had been given the right to collectively bargain. In your opinion, could you rely upon the report of a foreman in your plant who made that test?

A. In my opinion, I could not rely upon him.

Q. You would be fearful that he might, through and because of his Union affiliations, turn in an improper or biased report due to the fact that some of his brothers were in a strike fight or in a collective bargaining fight with the Company furnishing the material?

Trial Examiner Jaffee: I want to point out that even though there has been no objection to the form of
1640 your questions, many of which have been extremely leading, it makes it difficult to know how much weight should be given to the answers to such questions.

Mr. Dahling: I will try to make them less leading. Since some of them are so apparent I did not think very much of the leading character of the questions.

Mr. Nelson: The reason I did not object was because they would not be excluded. That is the reason I did not object. I am pretty well aware of Mr. Dahling's opinion and I do not know whether Mr. Patzkowsky shares them when he says he does. That is all right with me. I have tried for many years to persuade Mr. Dahling to a more enlightened view in these things without any success, which leads me to be perilous of my own powers of persuasion. In any event, I did not make any objection on this record.

Trial Examiner Jaffee: I gather that neither of you have been able to persuade the other.

Mr. Nelson: They have recognized the difficulty of persuading me and recognize that.

Mr. Dahling: That is one point on which we are in complete agreement.

Q. (By Mr. Dahling) Mr. Patzkowsky, we will say that the CIO or the AF of L or some other Union should attempt to organize the foremen of the Packard Motor Car Company after the Foreman's Association of Amer-
1641 ica have been given the right to collectively bargain and that such an organizational plan was in progress by this other Union, what effect do you think that

would have upon the Packard Motor Car Company in its production?

Mr. Karasick: I would like to raise an objection at this point.

Trial Examiner Jaffee: Will you read the question, please? I missed the last part of it.

(Question read.)

Trial Examiner Jaffee: Have you finished your objection, Mr. Karasick?

Mr. Karasick: I merely stated that I wish to make an objection. I would like to state the grounds of my objection, and that is that the question itself is not only hypothetical but contrary to the evidence already in this record.

Trial Examiner Jaffee: To which evidence do you refer?

Mr. Karasick: I am referring to the fact that both the constitution and by-laws of the Foreman's Association of America, if I recall correctly, and the written agreements that are in evidence and have been introduced in evidence show that the Foreman's Association of America has an organization and has pledged itself as an organization not to affiliate with another organization.

Trial Examiner Jaffee: Suppose they change their
1642 minds tomorrow?

Mr. Karasick: I suppose anything can happen.

Trial Examiner Jaffee: That is what he is asking the witness. He may answer.

Mr. Nelson: Would it help any if I would concede that all of the incidents of organized labor might follow the recognition of the foremen? That I do not know. Every eventuality that experience has taught us in the organization of labor is a possibility. I suppose I should concede that is so, but that it is probable, I do not concede. There is no evidence to support that supposition, I do not believe.

Mr. Donovan: We will accept the concession. I think the rest of it is a matter for argument.

Trial Examiner Jaffee: In other words, you want me to take the concession that two and two are four?

Mr. Nelson: That is what it amounts to.

Trial Examiner Jaffee: All right, I will take the concession.

Mr. Nelson: The probability is the thing which the witness does not address himself, nor does counsel. There is a possibility of anything taking place, practically speaking, of an incident of the organized state of the foremen out there, that is possible and conceded on the record.

1643 Trial Examiner Jaffee: Well, I suppose anything is possible. It is even possible that we might get through with this case sometime.

Mr. Nelson: That is something I am not so sure of.

Trial Examiner Jaffee: At any rate, the witness can answer the question.

The Witness: I believe it was brought out on previous testimony that if anyone else was trying to organize into the Foreman's Association or in that particular rank, a fight would be brought about—of course, that would create confusion and it would slow up production of the shop entirely at the same time. One of the principles of unions is that in numbers they have strength. If they weren't gaining their point, perhaps a lot of the people would rather join a union that had more members than the one they are affiliated with at the present time.

Q. (By Mr. Dahling) In other words, you feel that the mere fact that the Foreman's Association is independent at the present time does not mean that it will or can remain independent?

A. That is right.

Q. If, of course, it was not independent, but was affiliated with the CIO, you would have a situation of your supervisors who would have the power to recommend the firing and disciplining of workers in the same union

1644 with workers themselves. What do you think of that situation as far as Management is concerned?

A. Well, you just wouldn't have a grievance procedure where you needed it the most. Where you were directing the working force of the people.

Q. What reliance could you put upon the actions of your foremen and their recommendations in connection with

the rank and file workers who were members of the same Union?

A. You couldn't rely upon them at all in that case.

Q. You would have no confidence in them?

A. That is right.

Q. Now, we will say that you have this Foreman's Association of America with collective bargaining and one of the general foremen is a member of the Foreman's Association and one of his foremen under him, a foreman that he supervises, does not belong to the Foreman's Association, what would be your attitude toward any reports that might be made by the general foreman with respect to this non-member foreman?

A. Well, you would have the same condition that we just stated as if the foreman belonged to the same union as rank and file.

Q. What reliance or confidence, in your opinion, could you place upon the recommendation of this general foreman?

1645 A. You couldn't have any confidence or reliance upon him in any of his decisions with regard to his fellow members.

Q. In other words, you would also have to question whether or not this act was done, having in mind the report was made, having in mind the best interests of the Union or the best interests of the Company, is that right?

A. His loyalty to the Union, perhaps would be greater than his loyalty to Management in that case.

Q. At any rate, there being this divided loyalty, Management could not have the same confidence in any report he might make?

A. No.

Q. I suppose the same situation would exist if the general foreman was a member of the Foreman's Association and the foreman was a member of a rival Foreman's Association, would it not?

A. Their sympathies, perhaps, would be in general the same.

Q. In other words, the general foreman—you could not rely upon the general foreman's actions in connection with a member of a rival Foreman's Union, is that what you mean?

A. That is correct.

Q. Of course, you have three grades of foremen, general foremen, foremen, and assistant foremen. If the
1646 foremen are given collective bargaining through the Foreman's Association, how would you look upon reports made by a foreman as to a general foreman—pardon me, a general foreman as to a foreman or a foreman as to an assistant foreman, they all being members of the same union?

A. Well, I would not rely on the reports due to the fact that his loyalty to his fellow members in the Union would be so partial in that extent or that direction that they wouldn't be of any value to me.

Q. I suppose it would be true, Mr. Patzkowsky, that there might be foremen who would make very proper reports without being affected or having their reports affected by their Union affiliations. That is probable, is it not?

Mr. Nelson: You mean, Mr. Dahling, an exception here and there that had some merit in his judgment?

Mr. Dahling: I would say an exception, or where the reports would not be in any way affected by the fact of unionization.

The Witness: That probably would be true until the Union leaders found out about it.

Mr. Nelson: We feel flattered of its existence, even if for a moment.

Q. (By Mr. Dahling) Mr. Patzkowsky, then, as I get your testimony, it is generally to the effect that
1647 Management could not have confidence in these reports because they would not know when they might be made, having in mind the inference of the Union rather than the Company, is that true.

A. Yes, that is true.

Q. I take it from your testimony, Mr. Patzkowsky, that in your opinion a foreman must be independent. I think you so testified.

A. Yes.

Q. Can you elaborate a little on that? What, in your opinion, as far as Management, top Management is concerned, should be the position of a foreman as a supervisor?

A. Well, he definitely should operate as an individual. He is in reality a manager of a small group. His ideas must be carried out so that he can operate as an individual.

Q. In other words, he is in competition with his other foremen?

A. That is correct.

Q. And that is the position that he gets into as far as Management is concerned when he leaves the rank and file?

A. That is right. We must keep competition if we want to keep the standards of our product up to normal.

Q. In other words, you want competition so that the best men will be promoted to continue running your company is that it?

1648 A. Right.

Q. And you feel that if you had a Foreman's Association with rights to collectively bargain, that that would mean seniority divisions and would result in taking away from Management the full freedom of promoting people on the basis of ability?

A. Seniority would be the big item.

Q. It is a fact, isn't it, Mr. Patzkowsky, that it is the foremen who contact workers direct in the Packard organization?

A. That is right.

Q. Your division manager and assistant division manager and superintendents do not have really a direct contact with the workers?

A. That is right.

Q. They must, of course, rely on the reports that come to them from the foremen, including the general foremen, foremen and assistant foremen?

A. That is correct.

Q. I believe you testified that if this Foreman's Association was granted the right to collectively bargain you would feel that you could not fully rely upon these reports that came up the line from the foreman level?

A. No, we would have lack of confidence in them, due to the fact that we would not know where his

1649 loyalty was greatest, with the Union or with Management.

Mr. Dahling: You may cross examine.

Recross-Examination.

Q. (By Mr. Nelson) Mr. Patzkowsky, I suppose your studies have brought you to the conclusion that there are some things that are true and that may be accepted like the one suggested by the Examiner, two times two is four. There are certain principles that are true wherever you apply them. Isn't that a fact?

A. That is right.

Q. And it would not make any difference whether you said two times two was four in one language or another, it would still be four, wouldn't it?

A. Yes.

Q. Now, there is nothing new about competition, is there?

A. No.

Q. It is an old principle of human action, isn't it?

A. Well, there are new ideas being expressed each day.

Q. The principle itself is just the same, no matter how it is expressed?

A. That is right.

Q. It has been expressed, so far as we know, in the activities of the human race and the animal kingdom and even the vegetable kingdom and other forces of nature, isn't that so?

A. Well, I don't know if you can class competition—

1650 Q. (Interposing) Well, then, let's stick to the human factor and the human being for the time being. After all, that is what we are concerned with.

A. Yes.

Q. The probable reactions of a human being.

Trial Examiner Jaffee: Let's stick to that. I am not worried about the competition between one turnip and another.

Mr. Nelson: Put them too close together and you will see what happens.

Q. (By Mr. Nelson) What is the one thing that competition has always produced? Everywhere, all the time and the more intelligent the agent the more promptly it is produced?

A. What is your question?

Q. What does that competition and has that competition always produced everywhere, all the time? The inevitable consequence of competition is what, in one word?

A. In my opinion it is—

Q. Well, let me give it to you. It is combination or agreement, isn't that it? Isn't that the inevitable product of competition?

A. Well, I don't believe so.

Q. Well, that is what it produced among the foremen in the Packard Motor Car factory, wasn't it? Two and a half years ago your system of competition produced the

1651 Foreman's Association of America and that included every member of the supervisory group in these levels except two or three, didn't it?

A. According to your statements, yes.

Q. According to the figures given by your counsel here, Mr. Patzkowsky, that is what it produced, wasn't it?

A. Yes.

Q. Your point is that you propose to destroy the combination and repudiate the agreement, is that right?

A. I don't know that we had an agreement.

Q. You knew there was an agreement among these men, is that right? And you wanted to get the agreement done away with in some way, didn't you?

A. We would like to have them express their individuality.

Q. Well, do you think that that combination or agreement rules out the expression of individuality? Is that another one of your ideas?

A. In my opinion, yes.

Q. Well, I would like an answer to that question.

A. I say that in my opinion, to a great extent, it does.

Q. Then you say the unrestrained savage expresses more individuality than the average civilized citizen of this country under the present state of affairs? Would you say that?

A. Under the present state?

1652 Q. Yes.

A. I wouldn't say that.

Q. Our agreement is a social contract, to a limited extent, to a certain point.

A. Yes.

Q. And that enabled us to express a different type of individuality, didn't it?

A. Yes.

Q. Is one preferable to the other in your mind?

A. Yes, it is.

Q. Do you prefer the average American of the present day to the average Indian of Columbus' day, as you understand it?

A. Well, I don't know.

Q. Which would you rather be?

A. I guess some of the Indians lived in a warmer climate.

Q. We are living in a stern climate, as things look outdoors today. But continuing, don't you think that your talk about individuality has failed to take into account all of the factors, Mr. Patzkowsky?

A. Well, I suppose we can argue for years on all the factors in individuality.

Q. I am talking about the foremen at the Packard Plant and I am taking you as an educated man because you have had two or three or four years of college, is that right?

1653 A. That is right.

Q. You used another word which interested me, but I do not propose to exhaust the subject and I do not think that I should impose on this record. Let me ask you whether you think we are right in giving some credit to the Company and to Management for using good judgment in the selections that they have made Are we entitled to do that at the Packard Company in this case?

A. In the selection of what?

Q. In the selection of workers or foremen?

A. Oh, I believe we have shown good judgment in the selection and promotion of men in a lot of cases.

Q. Isn't it true that the Packard Management has done the best the Company could in selecting a competent group of supervision and an adequate force of workingmen?

A. I believe so.

Q. Now, having selected them, the Company has retained as best it could, the best among them, hasn't it?

A. Yes.

Q. Therefore, the term seniority isn't a bald statement of lapse of time. It has a very definite connotation, at least, at the Packard Company of capacity and ability and character, isn't that so?

A. Up until now it has.

Q. In other words, do you want me to believe that
1654 you think or you want the Examiner to believe that you think that the Company has kept the men five or ten or fifteen or thirty-five years knowing them to be incompetent or of questionable character?

A. No.

Q. Therefore, the term seniority connotates not only lapse of time in employment but it connotates also the Company's judgment that the man has character and a capacity for a task for which it selected him, isn't that so?

A. That is so.

Q. So when you come to a consideration of seniority, you have involved in that the Company's judgment of the character and capacity of the man, necessarily, don't you?

A. Yes.

Q. The only area in which you come to a conflict is when you measure that capacity of that particular man as compared to the capacity of another man, isn't that so?

A. That is right.

Q. Are the guards at the Packard Plant members of the CIO?

A. Yes.

Q. How long have they been members?

A. I couldn't give you the exact date, because I do not know.

Q. Well, it has been a couple of years, hasn't it, at
1655 least? My recollection would indicate about four. How wrong am I?

A. I cannot say. I am sure I don't know.

Q. Do you know how many guards there are altogether?

A. I could not give you that figure either.

Q. Do they have a separate Local or are they members of Local 190?

A. They have a separate Local.

Q. Affiliated with the CIO?

A. That is right.

Q. And have been for some years?

A. I wouldn't say years because I don't know.

Q. Well, let's say a substantial time. Then, it isn't just a recent occurrence of the last few months or weeks?

Mr. Dahling: Mr. Denison tells me, Mr. Nelson, that it is a year and a half.

Q. (By Mr. Nelson) All right, a year and a half. What has the Company been doing with the guards' reports, Mr. Patzkowsky?

A. The guards' reports?

Q. Certainly, they have not been throwing them away, have they? They have been acting on them, haven't they?

A. They have been distributing them to supervision, where the reports were made from in that particular department.

Q. The guards are there to find out things that are not for the foremen to find out and that are difficult for him to report, isn't that so?

A. Yes.

Q. In other words, it is a type of supervision that goes beyond that of the supervisor himself, isn't it?

A. Some of the reports may be from one supervisor who is not present.

Q. There are places where supervisors cannot be; that is, if he is doing his job?

A. The plant may be down that particular day, yes.

Q. Now, the Company has been relying upon these reports and acting upon them, hasn't it?

A. To a large extent, yes.

Q. In matters that are serious to workers in the plant?

A. That is right.

Q. And it has affected foremen too, hasn't it, at times?

A. I cannot recall of any case where it affected a foreman personally.

Q. What is your testimony on the experience of the

Packard Company with these guards? Have they shown a reasonable fidelity to perform their duties in these 18 months?

A. Reasonably, yes.

Q. That is about all you get from a group of men, isn't it?

A. Yes.

Q. Approximate reasonableness, isn't that so?

1657 A. That is true.

Q. Is there any proposition to do away with the guards?

A. No.

Q. Are the foremen bound in their conduct in the plant by the Company's contract with the CIO?

A. Not necessarily.

Q. Aren't they bound to avoid breaches of that agreement, aren't they so instructed?

A. We would certainly like to have them set a good example.

Q. Of compliance with the agreement?

A. Yes.

Q. You expect them to be leaders in that respect?

A. That is right.

Q. And generally, haven't you found them faithfully carrying out those instructions to a reasonable degree in the plant?

A. Up to this time, yes.

Q. Now, the time study is a matter agreed upon between the CIO and the Company, isn't it?

A. Yes.

Q. And there again you expect the foremen generally to be leaders in compliance and performance, don't you?

A. That is part of his responsibility.

Q. Because the time study was a matter sought by

1658 the Company primarily, wasn't it?

A. That is right.

Q. Up to now, has the performance of the Foremen been a reasonable performance?

A. As an overall picture, I would say yes.

Q. I will agree with you there. There is a degree of

dereliction and there are defects here and there, but that is a general human proposition. However, it has been a reasonable performance, hasn't it?

A. That is right.

Q. I mean by that, the cooperation of the foremen group in the time study program?

A. That is right.

Q. And the same is true as to the Work-To-Win Program, isn't that so, hasn't it been of reasonable performance by the foremen?

A. Yes.

Q. And cooperation in it?

A. Yes.

Q. Where it touches his work, is that right?

A. Yes.

Q. Now, you have said a good deal here on direct examination by Mr. Dahling about divided loyalty, haven't you?

A. That is right.

Q. Now, I take it for granted that you are sincere
1659 in the opinions you have expressed on this record.

A. I am.

Q. And you entertain, apparently, a lively fear that if the foremen are recognized in an organization, their loyalty will be weakened, is that right, their loyalty to the Company?

A. Yes.

Q. And as you said, it would not be as reliable as though each were fighting his own fight in a dog eat dog competition with the other foremen. That is in substance your testimony, isn't it?

A. That is right.

Q. I might have stated it a little colloquially, but that is the substance of it, isn't it?

A. That is right.

Q. In other words, if every foreman in the factory is a competitor of every other foreman in the factory for a position and recognition you say, for production, then, you will have a greater loyalty on the part of each of those competing individuals, to the Company's interests

than as though they were working altogether cooperating to bring about production, that is your proposition, isn't it?

A. That is right.

Q. You believe that?

A. Yes.

1660 Q. You believe that human experience is on your side on that?

A. Yes.

Q. You think it is?

A. Yes.

Q. Let us take a little look into the elements. There isn't any circumstance in which the foreman would not be interested in what he is going to get for it, is there? You cannot conceive of a situation where the foreman is going to be heedless of what he gets paid for doing it?

A. As an individual?

Q. As an individual. Let us take him that way first.

A. Yes.

Q. He is always going to have a standing interest against his economic interest, that is, the economic interest of the Company, for his own pay, isn't he?

A. I don't believe so.

Q. You don't think so?

A. No.

Q. Well, you can bring that within certain bounds. That is to say, he can express it reasonably or mildly, but he will always be interested in getting as much for himself as he can, wouldn't he?

A. That is right.

Q. To that extent, he will always be in an adver-

1661 sary's position and interest to the Company, wouldn't he?

A. Yes, but I believe he will also remember that the Company has to make money to exist and he is going to see to it that he makes money for them.

Q. Let us concede, for the purpose of this record, that every foreman out there believes that his dignity and his position and his welfare should be secondary to the profit of those interested in this Company. Let's just assume

that. I am not agreeing that it is a reasonable proposition, but I think we can agree that most of these men think so. Now, let us say he is in competition with every other foreman there and he has a right under your scheme to appropriate or aggregate to himself the income of half a dozen other foremen if he can manage it. Then, if he can get so much they will have to cut the wages of a lot of other foremen?

A. No, I wouldn't say that.

Q. Why? You wouldn't let individualism go that far?

A. No, unless he was advanced to a more responsible job, his salary would be increased, if that is what you mean?

Q. Well, suppose they have just got so much money for general foremen and there are 120 of them in the plant, suppose ten of them got together and they said, "Okay, we will get about one-third of that appropriation for ourself and express ourselves individually until we get it." There is no reason why they couldn't under your plan do so, is there?

1662 A. Yes, I believe so.

Q. What is to stop them?

A. You mean they would eliminate a portion of it?

Q. No, they would keep them all there on the job but cut the wages. When you put a man out of there you might do him a favor. You keep him there on low wages, that is the hurt, isn't it?

A. I don't seem to understand your question.

Q. I am taking your scheme of individual expression, under that scheme there is no reason why ten of them or even one of them shouldn't get all he could under your plan, is there?

A. He can go forward just as fast as his ability would allow him to.

Q. I am talking about pay.

A. Of course, that would go hand in hand.

Q. You assume that, do you? Is that your experience, that pay goes hand in hand?

A. As your responsibilities increase, your pay increases. It has in my case.

Q. You think that that is a general proposition, that without more ado, a man—the more a man does and the abler he is, the more rapidly he advances and the pay goes with him?

A. Yes.

1663 Q. You think that is true?

A. Yes.

Q. What is there to secure that under your plan?

A. Well, the individual himself and training himself to carry out greater responsibilities.

Q. You are, Mr. Patzkowsky, capable of carrying out greater responsibilities than you have right now, aren't you?

A. I couldn't say. It is hard to judge on that one, I think.

Q. Well, don't you kind of secretly think like we all do? Don't you surely feel that you could occupy the next place above you, as we all do?

A. That would be wishful thinking.

Q. Some of us get a chance at it, like you have?

A. That is right.

Q. Where you got a chance, there were 100 other fellows who did not get a chance at the Packard Plant, isn't that so?

A. Yes.

Q. And you still are not an individualist enough to say, are, you, that you clearly outclassed all of those men in all particulars, would you say that, Mr. Patzkowsky?

A. No.

Q. I mean applicable to your position?

1664 A. There are 30,000 at the plant.

Q. And a lot of the men at the plant approach you in the capacity to hold your position?

A. Yes.

Q. Otherwise, they would be in a bad way. They have to have reserves of human beings, don't they?

A. That is right.

Q. Coming back to my proposition, and this is the last thing I want to ask you,—it is the proposition that the foremen will always have that matter of pay and the

matter of his classification with respect to other foremen —at which he may be presumed to be, in interest, at least, always an adversary to the Company—isn't that so, first?

A. I presume that is true.

Q. Now, that is an area, we will say, of conflict—that may be a strong word, but just for the purpose of setting it out clearly and emphasizing it now, you can do a number of things with that—let's exhaust the possibilities because they are not many in number—you can leave that conflict for each man to carry on with the Company by himself, can't you? That is one way, isn't it?

A. That is right.

Q. And that is what you favor?

A. That is right.

Q. Then you have small groups of them, regardless
1665 of their classification, carrying on that struggle with the Company, each group for itself. Can't—you? For example, on the bases of nationality, religion, race or personal preference or something of that kind? An association where the large members may get in there and shoulder for each other, that could happen, couldn't it, under your plan?

A. That could happen.

Q. Yes. In other words, you can have individuals or groups on various bases—that is perfectly natural—for instance, you can have color for one thing, couldn't you?

A. That is right.

Q. You have had some of that at the Packard Plant, haven't you, already?

A. Yes.

Q. And you do not really recommend that on the experience you have had, do you, Mr. Patzkowsky?

A. You mean—

Q. Groups based on color pressing for an advantage at Packard's?

A. Well, I haven't given that much thought.

Q. It probably has not been your personal responsibility. But just as it stands, generally speaking, you would not recommend that as a scheme of operation out there, would you?

A. Small cliques?

1666 Q. Small cliques, yes. Every factory is full of them where there is no organization and you know it.

A. Well, I wouldn't agree with you on that, there are not too many cliques at Packard anyway.

Q. Then you can have an organization that represents all the foremen alike, between the maintenance and production worker and the policy group organized into one association, couldn't you?

A. They could be organized.

Q. It has been done?

A. You still have your cliques within your union.

Q. All right, you can have that group devoted to an equalitarian principle on the basis of merit, couldn't you?

A. The majority, perhaps, would rule. It wouldn't be in its entirety—

Q. (Interposing) Do you recognize majority rule as a good sound democratic procedure, Mr. Patzkowsky?

A. Yes, I believe I do.

Q. This country has done fairly well with it, hasn't it?

A. Yes.

Q. Has the Packard Motor Car Company—Well, the Packard Motor Car Company is an evidence of it itself, isn't it?

A. That is right.

Q. Now, Mr. Patzkowsky, you can have that association and you can have it in two ways, practically speak-

1667 ing. We are limited to this now, aren't we; practically speaking, you can either recognize it or you can drive it underground, with its private interest in getting pay from its employer, isn't that where you are?

A. That is right.

Q. Is it your testimony that the power of this Board should be used to deny these men recognition and open operation and negotiation or that it deny that to them and force them to go underground to protect their economic interests?

A. I believe they should remain a part of Management.

Q. Well, they are going to, but they are going to be paid for it. As to their pay and conditions, they want to talk altogether to the Employer instead of one at a time.

Now, you have got your choice. Do you want to drive them underground and force them to operate in secret and effectuate their purposes by forces that are not recognized in the factory, or do you want them recognized by law and brought out into the open?

A. In my opinion, I do not believe that any of the foremen at Packard were driven underground in the past.

Q. Well, they are midway now, neither recognized nor underground.

A. Why should Packard change its policy at this time after they have been in existence for forty years or more?

Q. Would you like me to answer it or do you want
1668 me to ask you a question? It has already changed its policy, hasn't it, with respect to foremen? It already has an employment office, it already has a purchasing department, it already has a master mechanic, it already has a labor relations office, it already has made a contract with the maintenance and production workers, all of that and many other things that I could go on here and mention have changed the position of the foremen, haven't they? Yes or no, Mr. Patzkowsky?

A. Yes.

Q. They have changed the position of the foremen?

A. Yes.

Q. And the foreman in defense of his dignity and personal interest, asks to be recognized along with the rest.

Mr. Dahling: That is a bit of argument, Mr. Examiner.

Mr. Nelson: Yes, it is and so is yours.

Trial Examiner Jaffee: He may answer the question.

The Witness: May I have the question read, please?

Trial Examiner Jaffee: Read the question.

(Question read.)

Mr. Nelson: That is true, isn't it?

Mr. Dahling: He has to be recognized—I don't know that the form of the question calls for an answer.

Mr. Nelson: He has to be recognized, that is true, isn't it?

1669 The Witness: Yes.

Q. (By Mr. Nelson) The Company having changed its policy in many things that affected the foremen, which have served to place him at a disadvantage, as he feels

now, Mr. Patzkowsky, that opens the way fairly, doesn't it, for the Company to change its policy with respect to its foremen, isn't that a logical conclusion?

A. Well, I think the Company would have their management very close to their heart at all times. If you can put Management into any one particular individual, as to where Management is in a group, why, they would certainly hope to remain in business and treat him fairly.

Q. Well, is there anything inherently wrong in the Company dealing with these men as a group by open negotiation lawfully recognized, in your opinion?

A. Yes.

Q. What is the trouble?

A. Well, in my previous testimony I said that as soon as you have collective bargaining, the leaders of the Union have an antagonistic attitude toward Management which spreads down throughout their members and that certainly is not a healthy condition.

Q. You think it is more unhealthy, expressed collectively than as though it was expressed individually?

A. Yes, I do.

1670 Q. You mean unhealthy for the Company?

A. And for the individuals.

Q. Apparently you disagree with the whole Union principle?

A. No, I wouldn't say that.

Q. What part of it would you leave?

A. The Unionism of Management.

Q. Well, in other words, you would like Management organized and the workers organized by Management only?

A. The workers organized by Management?

Q. Yes, that is what you said, if I understood you.

A. No.

Mr. Dahling: I thought he said he was opposed to the unionization of Management.

Mr. Nelson: I asked him—

Q. (By Mr. Nelson) Let me ask you again, you disapprove of the whole Union principle, don't you?

A. I said no.

Q. What part of Unionism and what kind of Unionism do you approve?

A. I approve it to a certain extent if the people that are actually the producers and the workers are in it.

Q. You mean the manual workers?

A. Yes.

Q. You do not recognize supervision as a productive force?

A. They do not work with their hands.

1671 Q. On that we agree.

A. They use people as their tools.

Q. People, machines and materials?

A. Yes.

Q. And the tie-up is the idea that they convey?

A. That is right.

Q. You do not recognize the emanation and the orderly application of those ideas as a productive force?

A. Well, the supervisor exists to make the work of others easier and more efficient and more economical.

Q. Isn't that a productive element?

A. In the end it would be.

Q. Let me be perfectly fair and state your proposition if I am correct about it. You say that the organization of the manual workers—you make no objection to that, but when you get beyond that you are opposed to Union principles?

A. That is right.

Q. In other words, you would not organize teachers and you would not have a Bar Association, in other words, Bar Associations are mistakes?

Mr. Dalling: I think the witness was referring to the Packard Company.

Mr. Nelson: I am going to take him on a little broader field.

The Witness: I don't know. I have not given any

1672 thought along those lines.

Q. (By Mr. Nelson) There is an Engineers Association and even an Automotive Engineers Association.

A. Yes.

Q. And there is a railroad managers association and has been for years in this country.

A. I don't know.

Q. You know about the lawyers and ministers and doctors and all those people having associations, don't you?

A. Yes, there are quite a few associations.

Q. Do you count our handling of books manual labor or are we in the same class as foremen in the emanation and application or origination and application of ideas?

A. The majority of those people you mentioned are not supervisors of other people.

Q. Well, I represent the Foreman's Association of America and I have to bargain with them for my pay. Do you think that makes me disloyal to them?

Mr. Dahling: Mr. Nelson, does the Bar Association represent you in your bargaining?

Mr. Nelson: It could with a whole lot more grace.

Mr. Donovan: Individually or through your Lawyers' Guild?

Mr. Nelson: You see, the whole point is this—we can carry on indefinitely and the more lawyers get into
1673 it the worse it is, of course. Perhaps I can suggest to you that you are in error in making the test the performance of manual labor. For instance, I will suggest in that connection—in connection with that last question, the Typographical Union and the Marine Workers and the Railway Union and the Miners who all take in their supervision right along with the rest of the men.

The Witness: I don't know that they do.

Q. (By Mr. Nelson) You don't know?

A. No.

Q. You don't know the history of the function of those unions, that they have been functioning all along with foremen right in with them?

A. No, I don't.

Q. In the same group?

A. No.

Q. Now, one other matter. You do not have any information do you, about the working of the Ford contract, do you

A. The working?

Q. With the Foreman's Association?

A. The working of the Ford contract?

Q. How does it work?

A. None other than what was brought out here in the testimony.

Q. Where there is no difficulty at all with six dif-
1674 ferent classifications of foremen?

A. I don't know; I haven't heard anything about it.

Q. Including the marine and other skilled groups that use ideas instead of their hands, you have not heard anything about their experience with that?

A. None other than what was brought out here in the testimony.

Q. You said you had some doubt and hesitation about where the assistant foreman and the foreman over him and the general foreman over him and the special assignment men that work under the general foreman or with him, whichever way you want to put it, being all in the same organization—you expressed some doubt of that, didn't you?

A. Yes.

Q. As having a tendency to be deleterious to the loyalty to the Company and their dependabiiity?

A. That is right.

Q. Let's assume for a moment, Mr. Patzkowsky, that you are going to have organization among these men and that competition is going to have its inevitable result in the foremen at the Packard Plant and produce a combination where two times two is four, sociologically speaking, just as it is mathematically speaking, you have got to make up your mind then—if we take that as a premise—I am asking you to concede it—I admit that you
1674-A are opposed to it—However, take it as an idea for a moment—you are going to have organization and then you have got to have either these non-policy formulating foremen in one Association or you have to have them in separate levels, haven't you?

Mr. Dahling: As an answer to that question, admit that they are non-policy foremen?

Mr. Nelson: Just take the question as a hypothetical question and take it as true only because I say it was and not because you admit any part of it—you are either

going to have four separate organizations or you are going to have one with all four in it, according to your idea, isn't that so?

The Witness: Well, I didn't say that we should stop at the end of four.

Q. (By Mr. Nelson) You can go right on up and take superintendents, division managers, and put them in separate organizations.

A. Anyone that supervises, their responsibilities are similar.

Q. Now, we come to this proposition, where you thought that you could not get along with them in the same organization—that is a short way of saying what you had in mind, apparently—Haven't you got to make up your mind whether you are going to deal with jurisdictional differences of four separate organizations or deal with
1675 these four separate levels of supervision in one organization? You have got to do one or the other, haven't you?

A. I don't know which would be more difficult.

Q. How would you like to let the foremen decide it? Can you think of anybody more competent to decide what kind of level should be in their organization than the foremen themselves or do you think Management would have some superior ideas on that?

A. Well, a foreman is part of Management.

Q. Well, I am talking of Management above the general foreman. Wouldn't it be a pretty American way of doing it and a pretty smart way of doing it, to let the foremen themselves decide who they want in their organization?

Trial Examiner Jaffee: That is, if there is to be an organization.

Mr. Nelson: I am assuming that there must be an organization. You do not have to concede at all, except for the purpose of answering the question, anything—Wouldn't it be a pretty good idea to let the foremen themselves decide?

The Witness: I don't know; I haven't given it much thought.

Q. (By Mr. Nelson) Mr. Patzkowsky, were you ever a member of any Union?

1676 Q. Which one?

A. M. E. S. A., for one month.

Q. How long ago was that?

A. Oh, I think 1933, when they barely first started organizing.

Q. You never became a member of the CIO?

A. No.

Q. Or of any Local or branch?

A. No.

Q. And your whole union experience is included in one month's membership in the Mechanics Educational Society of America?

A. As far as a member is concerned, yes.

Q. Which Local were you a member of?

A. I couldn't remember which Local it was.

Q. Can you give us the Company?

A. At Richard Brothers, I think at that time I was with Richard Brothers.

Q. In what division of that? Were you a toolmaker?

A. Diemaker.

Q. And you joined the Union, am I free to infer, only because they organized the shop you were in and you had to belong to continue working there?

A. I was told I had to join or I couldn't work there.

Q. And you got a card to go to work?

1677 A. I worked there for one week or two before I got the card.

Q. That was just as a routine matter before you got the card, I suppose?

A. I had to go after the card myself.

Q. Did you attend any meetings?

A. None.

Q. Did you take any part in the work of the Local?

A. None.

Q. And you never had any practical or actual experience as a Union man?

A. No, that is correct.

Q. And you have been labor relations representative of the Packard Company for a period of two months now?

A. Approximately.

Q. Have you given labor questions any particular study or thought outside of your employment at Packard?

A. Yes. I started that when I was in college. That was a big field and also foremen training and I started taking that up at that time.

Q. Now, apparently you would be unwilling for the foremen to organize and affiliate with the AF of L, the CIO, the Confederated Unions of America or the Miners or the Railway Men or any other labor group, is that right?

A. That is right.

Q. Whether that group was larger or smaller than
1678 the foremen, wouldn't make any difference to you, would it?

A. None.

Q. For instance, it is estimated that there are three and a half million foremen in this country and it is conceivable that all of them or most of them might become members of the Foreman's Association of America and you would still not want the foremen at Packard's to be a chapter or affiliated with that group?

A. That is right.

Q. Suppose the Foreman's Association of America should become affiliated with the National Association of Manufacturers and adopted and carried out its policies, would you be willing to see the foremen affiliated with that group?

Mr. Donovan: You will first have to find out from this witness if he knows the policies of this Association that you mention.

Q. (By Mr. Nelson) Mr. Patzkowsky, have you ever heard of the National Association of Manufacturers?

A. I have heard of it.

Q. Have you ever heard of the United States Chamber of Commerce?

A. Yes.

Q. In a general way, you know the public policy and pronouncements, like the rest of us do in a public
1679 way, of those Associations, is that so?

A. I suppose so, but I never paid any attention to their definite policies.

Q. Don't you recognize them as an outstanding source of the pronouncement of labor policy in this country?

A. Of labor policies?

Q. Indeed.

A. It has never come to my attention.

Q. Well, suppose we should become affiliated to either one of those bodies. Would you make any objection if we undertook to carry out their policies?

Mr. Donovan: Mr. Examiner, I submit that the witness cannot answer that question if he does not know what their policies are.

Mr. Nelson: He said that in a general way he did.

Mr. Dahling: He said he did not know their policy.

Trial Examiner Jaffee: Objection is sustained.

Q. (By Mr. Nelson) Would you be willing for the foremen to be a Company Union? That is the question put in everyday language.

A. Company Union?

Q. Yes, or affiliated to a Company organization, they would then be loyal, wouldn't they?

A. I can't conceive of that idea either.

Q. My conception of it is this, and I guess perhaps
1680 it would answer your proposition that they cannot be faithful to their economic interests and at the same time serve the Company, but if they once and for all committed themselves wholeheartedly as an organization to the interests of the Employer, then what would happen to your objection that they were lacking in loyalty?

A. I still think that they should operate as an individual.

Q. You still want that one man at a time proposition?

A. That is right.

Q. And you think that is consistent with the welfare of any important group in mass production under the wage system?

A. Yes.

Q. Under the wage system for labor and the price system for products—you think that mass production, operated by power machines under modern circumstances—that that view is consistent with the welfare of any considerable group of employees so involved?

A. I would certainly want to plead my own case and my own opinion.

Q. That is not quite an answer to my question. Do you still think the welfare of the group would be served by such an arrangement?

A. Would it be what?

Q. Served by such an arrangement, which you have
1681 evidenced under modern circumstances?

A. Yes, I believe the group would be.

Mr. Nelson: That is all.

Trial Examiner Jaffee: We will take a ten minute recess at this time.

(Recess.)

Trial Examiner Jaffee: The hearing is in order. Are we ready to proceed? Are there any further questions of this witness?

Mr. Karasick: No questions.

Mr. Nelson: No questions.

Mr. Dahling: No questions.

Trial Examiner Jaffee: I have one or two, I believe.

Q. (By Trial Examiner Jaffee) I am not sure, Mr. Patzkowsky, whether I got one of your answers. Did you testify that by and large, the foremen of all classes at Packard have up to now been loyal to the Company?

A. Yes.

Mr. Donovan: I think he made an exception to that on the record with reference to the many restrictions which he said did not help any. Those were his words.

Trial Examiner Jaffee: Do you adopt those qualifications?

The Witness: Yes.

Q. (By Trial Examiner Jaffee) If the rank and file
1682 go out on strike, would you say that the rank and file was loyal to the Company?

A. No, I would say they were loyal to their Union.

Q. Would you say, or would you not say that if they are loyal to their Union, they are therefore disloyal to the Company?

A. If they were on strike they would be disloyal to the Company.

Q. Would you or would you not say that any strike is disloyalty to an Employer?

A. I say it would be disloyal.

Q. As I understand the present situation, you have a union of foremen at Packard Plant, which the Packard Company has not recognized, is that right?

A. That is right.

Q. Would you or would you not say that at any stage of the game with the situation just mentioned existing, that the Foreman's Union would need greater help from the UAW now than it would under other circumstances?

A. I don't know.

Q. Would it be fair to say that the Foreman's Union, since it has not been recognized, has got to pass the hurdle of recognition before it can go on as a union and bargain as to matters affecting wages, hours and working conditions?

A. Well, as long as they are not recognized, as far
1683 as the Company is concerned, there is no union.

Q. You mean that there is no union of the foremen at the Packard Plant?

A. As long as they are not collectively bargaining with the Company I would say it is not in operation.

Q. You mean it exists, but does not operate, is that it?

A. That is right.

Q. That is to say, that it does not operate or that it is not actually bargaining with the Company for the purposes bargaining usually covers?

A. That is right.

Q. Of course, if the Company should recognize the Union, the Union is then over that hurdle?

A. That is right.

Q. So today there is a hurdle which exists, which would not exist if the Union were recognized?

A. That is right.

Q. Would you or would you not say that if the Foreman's Association of America is to be helped by the United Automobile Workers, it needs more help now or less help now or the same help now than if there were recognition?

A. I couldn't say that, I wouldn't know. It perhaps would depend upon both unions.

Q. I understood you to testify, and if I am wrong you may correct me, that the organization of employees
1684 of any class and the organization of foremen as well or included into a Union, create certain obligations to that Union among the members of it?

A. That is right.

Q. In fact, I think you said, if I have it correctly, that all unions are alike in their basic principles?

A. I said that, yes.

Q. Is it your understanding that the Foreman's Association of America has a constitution?

A. Yes.

Q. Is it your understanding that it is supposed to be the duty of the members of the Association of the Foreman's Association of America to abide by that constitution the moment they join?

A. Yes, I believe so.

Q. Is it your understanding that right now, under present conditions, the members of the Foreman's Association owe a duty of loyalty or are supposed to owe it to the Association?

A. If they are living up to their Constitution, yes.

Q. Have you assumed that they are by and large living up to that Constitution?

A. Yes.

Q. Do you therefore assume that right now there is a situation of divided loyalty?

A. That is hard to say, I would not know. As long
1685 as we do not have collective bargaining with them, it is difficult to find out those things.

Q. Would you say that right now the foremen—and I am using the term broadly—owe a duty of loyalty to the Company?

A. Yes.

Q. Would you say that right now that the membership in the Foreman's Association of America of the foremen—that the members of that Association owe a duty of loyalty to their union or are supposed to owe it?

A. If they have joined that and if it is their belief, why, that is their choice.

Q. What is their choice?

A. Of owing loyalty to the Union or not.

Q. Why haven't we got the conflict right now?

A. I say that they haven't collective bargaining and they are not recognized. We are operating exactly as if there was not a union.

Q. Well, are there or are there not two loyalties here?

A. I believe there are.

Q. Do they conflict? In other words, does Union membership conflict with loyalty to the Employer?

A. Yes.

Q. Does it make any difference in that respect whether it is a rank and file worker or a foreman or anybody else?

1686 A. Well, as I testified before, as foremen are using people as their tools, it would be more pronounced in their case than it would be in the actual workers or the rank and file.

Q. Does that mean, then, that the difference is a difference in degree?

A. That is true.

Q. This Mechanics Educational Society of America, the MESA, as it is referred to generally, that is an independent Union, is it not?

A. I believe it is.

Q. And still is?

A. Yes, it is considered as such.

Q. When was it that you were a member of that organization?

A. In the very early stages of their organization in 1933, I believe.

Q. So that has remained an Independent Union for about twelve years?

A. Yes.

Mr. Nelson: Of skilled men too, Mr. Examiner.

Q. (By Trial Examiner Jaffee) Is it of skilled men, by the way?

A. It is. I couldn't say whether it takes in anything else or not.

Q. But generally, skilled men?

1687 A. Generally, skilled men, the name so implies.

Q. Have you had any experience dealing with foremen's unions as such?

A. No.

Q. Am I correct then in assuming that the answers you have given as to what would happen if the Foreman's Association of America were recognized by Packard, is based on your guess or speculation—and you may put in any other term you wish—as to the future?

A. In my opinion?

Q. As to the future.

A. Yes.

Q. What is that opinion based on generally?

A. As I stated in my previous testimony, I believe, the history of other unions.

Q. Does that mean rank and file unions?

A. Yes.

Q. Mr. Nelson, in his cross examination, referred to—if you recall—the Typographical Union, the Maritime Union and certain others.

A. Yes.

Q. Do you recall his saying that there were supervisors in those organizations?

A. Yes.

Q. Do you recall your saying you did not know that?

1688 A. That is right.

Q. If it is a fact, then—let us assume it is for the time being—if it is a fact that those organizations that Mr. Nelson mentioned that had supervision as members for a substantial number of years—if it is a fact that that has worked out satisfactorily, would that affect your opinion or any of the conclusions you have indicated?

A. Well, I hadn't thought about that. I wouldn't know at this time. I would certainly want to check into the particular type of work they were doing, whether it was manufacturing or what industry they were in.

Q. Well, Typographical Union means printing and Maritime—of course, the word itself indicates the industry.

A. I couldn't say. It seems to me that the Maritime and even the Typographical Union is quite a bit different than our industry.

Q. In other words, that means that while it might possibly have worked satisfactorily in other industries you do not think it will work in the automobile industry?

A. That is right.

Q. Is that because you think there is an inevitable tie-up or that there could be one between the Foreman's Association and the rank and file unions?

A. That is right.

Q. If the Foreman's Association of America is in-
1689 dependent and claims to be and if it remains that way—let's assume that as a fact, that it remains independent in every respect—do you still say that there should not be a Foreman's Association at Packard?

A. Yes.

Trial Examiner Jaffee: Are there any further questions of this witness?

Mr. Dahling: None.

Mr. Nelson: May I ask one question of the witness?

Trial Examiner Jaffee: Yes.

Q. (By Mr. Nelson) I would like to ask Mr. Patzkowsky if he thinks that the degree and type of loyalty required at Packard factory is any higher or more exacting than the loyalty required of the men in the operation of a ship.

Mr. Donovan: Just a minute. I don't think the witness said that—I think he said—.

Mr. Nelson: (Interposing) I am asking him if he thinks so.

Mr. Donovan: I think the witness stated that mass production presented problems not found in others.

Trial Examiner Jaffee: Have you any thought on that subject, Mr. Patzkowsky?

The Witness: I know very little about marine work and I couldn't say. It may be greater. They may expect greater loyalty but I do not know and I couldn't say.

1690 Q. (By Mr. Nelson) You do know that the captain of a ship under certain circumstances has control of life and death over every person on that ship, don't you, and you recognize that as a historical fact?

A. Yes.

Q. And in a way he must have that power, particularly over his workers, isn't that so?

A. Yes.

Q. Now, would you say that the type and degree of

loyalty that is required at Packard factory was any different or higher in requirement than on a ship where the men are in a foreman's position and are members of a maritime union and have been for hundreds of years?

A. Personally, I do not know if the captain of the ship is a member of it.

Q. I will exclude him to remove that difficulty. It is the supervisory force, and not the owner.

A. I don't know.

Q. I will even concede that his mate is excluded as well.

A. Who?

Q. Sometimes the mates are excluded. However, some of the mates are included in the Union.

A. All in the same Union?

Q. Yes, firemen, engineers, deckhands, oilers—

Trial Examiner Jaffee: Don't masters, mates and
1691 pilots have a union of their own?

Mr. Nelson: Yes, but other unions also include the mates, they are divided among other unions.

Mr. Donovan: Mr. Examiner, I think the question is of the same type of question, as far as our inquiry here is concerned, as asking the witness whether or not because of Military necessity and because our supreme command requires loyalty in the Army, whether or not the Army shouldn't be unionized also.

Trial Examiner Jaffee: I do not recall anybody asking the question about the supreme command in the Army.

Mr. Donovan: There are reasons for loyalty to a captain of a ship and there are the same reasons for loyalty of a Private in the Army to his superior officers. Is that a reason why they should be unionized?

Trial Examiner Jaffee: I think the witness indicated he has no particular knowledge of maritime situations.

Mr. Nelson: That is true. We all have a little imagination about the sailing of a ship but I thought I was entitled to his measurement of loyalty required. He has planted answers on his ideas of divided loyalty.

Trial Examiner Jaffee: Suppose you ask another question.

Mr. Nelson: That is the only one I wanted him to answer.

1692 Trial Examiner Jaffee: Do you think you can answer that?

The Witness: I don't think I can answer that intelligently.

Mr. Nelson: Apparently he never sailed very much.

The Witness: Right one hundred percent, other than a rowboat.

Mr. Nelson: That is right. Scotland has a bigger shoreline than Poland has; as I remember it, Poland has none.

Trial Examiner Jaffee: I am pretty much in the same position as he is. Are there any further questions of this witness?

Mr. Karasick: No questions.

Mr. Dahling: I wonder if I could ask Mr. Nelson a question about the MESA, which he gratuitously put in the record?

Trial Examiner Jaffee: Yes.

Mr. Dahling: It is my understanding that the MESA is a part of the Confederated Unions of America.

Mr. Nelson: Yes, I agree with Mr. Dahling. It is affiliated now with a group of independent unions in a confederation, but it is not affiliated in the sense that the component unions of the American Federation of Labor are or that the component Union of the Congress of

1693 Industrial Organizations are, it is a looser confederation.

Trial Examiner Jaffee: I understand also that the Confederated Unions of America came into existence not so very long ago.

Mr. Nelson: Yes, each union has proudly maintained its independence, although it is in the confederation. It is like John Calhoun's idea of a confederation. There was a time when we had a confederation of states and that time their experiences brought them closer together.

Trial Examiner Jaffee: Mr. Nelson has brought us back to the American Indian, the Civil War, the Aborigines. The witness is excused.

(Witness excused.)

Mr. Dahling: Mr. Patzkowsky, you may step down.

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Mr. Nelson: Mr. Examiner, the Petitioner includes in this petition and claims all general foremen, foremen, assistant foremen and special assignment men in the main plant, the Hupp Plant and the Bundy Plant of the Packard Motor Car Company.

Trial Examiner Jaffee: They are all in Detroit?

Mr. Nelson: They are all in Detroit.

Trial Examiner Jaffee: That then, is your unit claim
1694 under your petition?

Mr. Nelson: That is right.

Mr. Dahling: Mr. Examiner, Mr. Karasick asked us, the Company, to produce the figures on the present employees at the Bundy Tubing Plant and the Hupp Plant. We have that information as of November 30, 1944, being the same date used in connection with other figures on employment. There were no employees at the Bundy Plant and there were 89 at the Hupp Plant on one shift. The total employment estimated or anticipated is one thousand at the Bundy Plant on two shifts and 250 at the Hupp Plant on two shifts. It was hoped to reach the maximum employment this month but due, I guess, to construction troubles and that sort of thing, they will not reach it for an indefinite length of time.

Mr. Karasick: As the situation presently stands, do you have any idea of the monthly rate of employment at which it is anticipated or can be anticipated?

Mr. Denison: I do not think we can answer that. If we can settle labor trouble today, within a month we would probably have the conversion made.

Mr. Karasick: That is, if you can obtain the employees and have your plant ready, you will have the full employment force in a month?

Mr. Denison: Very likely, yes.

1695 Mr. Karasick: That is true of both the Bundy and Hupp Plants?

Mr. Denison: Yes.

Mr. Dahling: Mr. Reporter, will you mark Company's Exhibit 44 for identification and will you mark Company's Exhibit 45 for identification?

(Thereupon the documents above referred to were marked Company's Exhibits 44 and 45 for identification.)

Mr. Dahling: Mr. Examiner, I would like to offer in evidence Company's Exhibit 44 for identification—rather, an excerpt from the Dodge Victory News of March 24, 1944, which has already been marked Company's Exhibit 44 for identification. It is my understanding that Mr. Nelson does not deny that this article did appear in that paper and is not contesting the formal proof of the fact of the printing and appearance of it in the paper but does take the position, as he will probably tell you, that it is immaterial. I am sure he feels it is immaterial and irrelevant.

Mr. Nelson: I know the document and I do not dispute it nor do I dispute the authenticity of the document at all but I do doubt that it has any materiality or relevancy here.

Trial Examiner Jaffee: Will you gentlemen agree for the record as to what the Dodge Victory News is?

1696 Mr. Dahling: It is a publication as I understand, of the UAW in the Dodge Plant.

Mr. Nelson: In the Dodge Plant in Chicago. It is a publication of the maintenance and production workers Union in the Dodge Plant in Chicago, Illinois. I will concede that they do print such a paper as an organ of that Local and that this article appeared on the date stated. I do not question those facts, but I do doubt the relevancy and materiality of the opinion of the publishers of that paper as bearing on this issue.

Trial Examiner Jaffee: Are there any further comments on that proposed exhibit, gentlemen?

Mr. Karasick: May I see it?

Trial Examiner Jaffee: Yes.

Mr. Dahling: I don't know whether you care for any comment from me, Mr. Examiner. Of course, the purpose of this is to show a possible connection—

Trial Examiner Jaffee: (Interposing) I don't suppose you care to argue if I am with you.

Mr. Dahling: No.

Mr. Nelson: I should then object—

Mr. Dahling: That is why I asked if you requested any comment from me.

Trial Examiner Jaffee: It is received in evidence.

(The document heretofore marked Company's Exhibit 44 for identification was received in evidence.)

1697 Mr. Dahling: I have also had marked as Company's Exhibit 45 for identification a paper which is a copy of the resolution on collective bargaining rights of the foremen passed by the Michigan State CIO Council on June 29, 1943. It is my understanding that Mr. Nelson admits this resolution, of which Exhibit 45 is a copy—that this resolution was adopted by the Michigan State CIO Council on or about the date mentioned. I gather that Mr. Nelson denies the relevancy or materiality of this paper.

Mr. Nelson: That is correct. It was adopted and I think that is a correct copy. I assume that Mr. Dahling has correctly copied it, but I do not see that it has any relevancy or materiality here. It is only an expression of opinion of delegates to a maintenance and production workers convention.

Trial Examiner Jaffee: It is received in evidence.

(The document heretofore marked Company's Exhibit 45 for identification was received in evidence.)

Mr. Dahling: It is my understanding, Mr. Examiner, that Mr. Nelson concedes the fact that the plant protection employees at the General Motors Corporation were originally organized as an independent union and were later taken over by the UAW. I do not know whether that was as a unit, separate unit, or as a member of the general rank and file.

Trial Examiner Jaffee: What do you mean by taken over?

1698 Mr. Dahling: Became affiliated with the UAW.

Mr. Nelson: They were taken over and became a part of the UAW-CIO but they have retained a separate bargaining unit. That is, they make their own contract with their Employer and they are a part of the UAW.

Mr. Dahling: It is my understanding—.

Mr. Nelson: (Interposing) However, I am not admitting the materiality of all this: I am agreeing with him on the facts, as they are correctly stated.

Trial Examiner Jaffee: You gentlemen adopt each other's statements as far as the facts are concerned?

Mr. Dahling: Yes.

Mr. Nelson: I do. I don't know whether they were taken over but I think they are part of the Local of the Maintenance and Production Workers at this plant. They have retained the right to separately bargain and make a separate contract.

Trial Examiner Jaffee: Then both you gentlemen agree on the facts so far?

Mr. Nelson: Yes, and I guess Mr. Benjamin agrees with us on that.

Mr. Dahling: Also, that the Union Plant Protection Workers, the United Office and Professional Workers of America and the Federation of Architects, Engineers and Technicians, being three separate unions, were
1699 formed at the Chrysler Plant here in Detroit as independent unions and subsequent to their setting themselves up in that manner they became affiliated and a part of the UAW-CIO.

Mr. Nelson: The captains, lieutenants and the supervisory force of these groups belong to the Foreman's Association. The remainder, I believe, belong to the Maintenance and Production Workers Union in a group. Now, just what their rights are I am not able to determine at this time with any definiteness. I should like to—rather, I should dislike to state it on a guess—if they are in a group, they are members of the United Automobile Workers with the exception of the supervisory groups which belong to the Foreman's Association.

Mr. Dahling: And they were originally independent?

Mr. Nelson: They were originally independent as an Association and then put in for affiliation. Just where the supervisory groups, the captains, lieutenants and supervisory groups stepped into the Association, I am not aware—it has been some time back. That is the present situation there, I believe.

Trial Examiner Jaffee: Mr. Dahling, do you accept

Mr. Nelson's statement? He is accepting yours as he amends it.

Mr. Dahling: Yes, Mr. Examiner, for my purpose, that is quite satisfactory.

1700 Trial Examiner Jaffee: All right.

Mr. Dahling: Mr. Reporter, will you mark that Company's Exhibit 46?

(Thereupon the document above referred to was marked Company's Exhibit 46 for identification.)

Mr. Dahling: I would now like to offer in evidence as Company's Exhibit 46 a pamphlet issued by the United States Department of Labor, Division of Labor Standards, entitled, "The Foreman's Guide to Labor Relations," issued apparently August 1, 1944.

Mr. Nelson: I do not see any relevancy or materiality to that. The mistakes of one political subdivision surely should not be permitted to permeate another, nor should it be permitted to be perpetuated by another. I do not see any relevancy or authenticity to this. That it is a publication of that department, I do not doubt. I do not see why he could not cite it in his brief if he thinks it has any cogency.

Mr. Donovan: Portions of it are in the record now.

Mr. Nelson: In any event, an obviously careless statement by somebody sitting in an ivory tower—

Mr. Dahling: (Interposing) I take it, Mr. Nelson, that you disagree with it?

1701 Mr. Nelson: I think reasoning in vaccuo got nowhere and goes nowhere.

Trial Examiner Jaffee: I have not observed any ivory towers among government officers.

Mr. Nelson: There are numbers of them. I will not permit you to defend all government employees.

Trial Examiner Jaffee: I wouldn't even try to. However, the pamphlet in question has been referred to and I think it might as well be received. Company's Exhibit 46 is received in evidence.

(The document heretofore marked Company's Exhibit 46 for identification was received in evidence.)

Mr. Donovan: Mr. Trial Examiner, I have an exhibit

that I would like to offer in evidence, which I have not had an opportunity to discuss with Mr. Nelson because it did not reach us until last night. I do not know whether he does or does not care to make any stipulation with reference to it or to the authenticity of the opinion which I wish to introduce in evidence and the transmittal letter which was received by the employer in this case. I think as I go along if he does not care to so stipulate I will make some other disposition of the offer, if necessary, and get a witness down from the employer who received the letter and the opinion.

Will you mark Company's Exhibit 47 and 47-A?

1702 (The documents above referred to were marked Company's Exhibits 47 and 47-A, for identification.)

Mr. Donovan: I have had the transmittal letter marked Company's Exhibit 47-A for identification. Now, Mr. Examiner, we have in Michigan, a statute called the Michigan Unemployment Compensation Act, which is Act No. 1, Corporate Act of 1936, extra session, amended by Act No. 347, Public Act of 1937, by Act No. 324 of Public Act of 1939, by Act No. 364, Public Act of 1941, by Act No. 186, Public Act of Second Extra Session of 1942, and by Act No. 246 of Public Act of 1943. That statute of which I have a pamphlet and the copy published by the state and distributed by the Michigan Unemployment Compensation Commission, is in the Michigan statute annotated section 17.501. Following that Act, in Section 29-C, provides as follows, Section 29 being headed: "Disqualification for Benefits".

I am quoting from Section 29-C (reading): "For any week with respect to which his total or partial unemployment is due to a stoppage of work, existing because of a labor dispute in the establishment he is or was last employed; provided, however, that no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute, for the purpose of this section no individual shall be deemed to be directly involved in a labor dispute unless it is established—"

1703 Now, coming to the document marked Company's Exhibit 47-A, and in further explanation of the offer—during the May strike of foremen which has been testified to and referred to by several of the witnesses on the record here, there was testimony of the extent of the cooperation of the CIO with the Foreman's Association of America during those strikes. There was also testimony adverted to by several witnesses and it is still being referred to here this morning, I notice, of the status of the Foreman's Association of America as an independent union.

Trial Examiner Jaffee: You are speaking of evidence before the War Labor Board, Mr. Donovan?

Mr. Donovan: No, in this case there have been discussion and testimony whether or not the Foreman's Association of America was an independent Union. That is a debatable issue of matters, whether or not it is so, and if so, whether or not the Company could remain so. In the Trial Examiner's formula which is usually followed in these cases is included relevant inquiry made in Representation cases. I believe there is permitted some explanation of the nature of the Union or labor organization, which is the Petitioner. I desire to make an offer of evidence of an opinion, an official opinion of the Michigan Unemployment Compensation Commission by Mr. A. W. Brown, State Office Claims Commissioner. In this

1704 case a CIO employee who went on strike at the time of the foreman's strike and who subsequently applied for his unemployment compensation benefits by reason of his separation from his employment due to those strikes, and the transmittal letter to the Company by the Michigan Unemployment Commission of the decision disqualifying the applicant for compensation, accompanied by a copy of the Opinion, Exhibit 47. The transmittal letter, carbon copy of which was sent to the employer, is marked for identification as Company's Exhibit 47-A. The question as to how far Mr. Nelson cares to stipulate, would have to do only with the question of the authenticity of this notice of determination and the transmittal letter, 47-A, as having come from the Michigan

Unemployment Compensation Commission, as it appears to indicate on its face; and with the authenticity of the opinion of the Michigan Unemployment Compensation Commission through the officer in question that was issued as of August 2, 1944, containing the disposition and the reasons for it of the disqualification of this employee. If Mr. Nelson cares to stipulate as to the authenticity of the transmittal letter and the opinion of the Commission on this disqualification, we wish to have it received for such argument as the Company, or on the other hand, the Petitioner here may care to make as to its relevancy, and so forth. I would state in that connection that the Company would desire to have it before not only the

1705 Trial Examiner, but before the Board, because it bears directly upon another view from an official source of the extent of the cooperation of the CIO with the Foreman's Association of America when the latter was engaged upon a strike objective. It contains, for instance, a statement such as this: "From and after May 1 production of the Briggs—" I am reading from the Opinion, Company's Exhibit 47—

Mr. Nelson: (Interposing) I think I ought to object now to the reading from the Opinion and I object to the Exhibit.

Mr. Donovan: I thought I would give you a fair chance to make a fuller objection after finding the use we chose to make of the Exhibit.

Mr. Nelson: I know the use to which you want to put it. It is an argumentative use, and I have no objection to your using it for all it is worth in argument, but I object to it as a part of this record.

Mr. Donovan: Mr. Examiner, we ask definitely that Exhibits 47 and 47-A be received. My only inquiry from Mr. Nelson would be whether he questions or does not question the fact that this Opinion from the offices of the Michigan Unemployment Compensation Commission and the transmittal letter attached to it, Exhibit 47-A, was received by the Employer from the Commission. That

1706 would obviate the necessity of getting a witness down here to so state. If Mr. Nelson does not want to go so far—

Mr. Nelson: I have no doubt that you got such a letter, but it is absolutely irrelevant and immaterial.

Trial Examiner Jaffee: May I see it, please?

Mr. Donovan: Yes, sir.

Mr. Nelson: I do not mean to compel him to produce a witness or anything of the kind.

Mr. Donovan: I might say, Mr. Examiner, in this connection, I believe the Circuit Court of Appeals does not take judicial notice of State Statutes and for that reason I would like to introduce in evidence the Michigan Unemployment Compensation Act or in the discretion of the Trial Examiner, such portions of it that appear to be relevant to the exhibits that are offered, which may well be the section I read, Section 29-C of the Michigan Unemployment Compensation Act. Now those exhibits would be offered not necessarily with the claim that they are proof of the facts recited in the opinion, but as evidence of how the situation was viewed by an official commission of the State of Michigan charged with the duty of making a determination respecting the relations of the CIO and the Foreman's strike in May in Detroit. For these statutory purposes, it was made, as they all are and the Company would desire to make such arguments—

1707 Trial Examiner Jaffee: Mr. Donovan, I started to try to read this six times. I simply cannot listen to you and read it at the same time.

Mr. Donovan: Mr. Examiner, I merely wanted to call your attention to the fact that we want to introduce the Act, if you want it.

Trial Examiner Jaffee: Do you want to see this, Mr. Karasick?

Mr. Karasick: Yes, sir.

Trial Examiner Jaffee: Mr. Donovan, does the Company intend to offer any further evidence in connection with the subject referred to in Company's Exhibits 47 and 47-A for identification?

Mr. Donovan: I did not understand the question, Mr. Examiner.

Trial Examiner Jaffee: Read the question.

(Question read.)

Mr. Donovan: Mr. Nelson, I believe, stated he does not quarrel with the authenticity of the documents as having come from the Commission, but does quarrel with the relevancy and materiality. If that is so, we would like to have the documents received in evidence for such use, by inference or argument, as the Company may be able to avail itself on its part and the Petitioner on its part.

Trial Examiner Jaffee: You still have not answered my question.

1708 Mr. Donovan: Do you mean other qualifying evidence?

Trial Examiner Jaffee: I am not questioning the authenticity of the document either and I do not desire to be technical on that ground, particularly in view of the concessions. I merely asked whether or not you intended to offer any further evidence with reference to the subject matter of the material indicated in your particular exhibits.

Mr. Donovan: In this hearing have I other witnesses?

Trial Examiner Jaffee: Yes.

Mr. Donovan: No. We want the documents to be before the Board for whatever they are worth.

Trial Examiner Jaffee: Do I understand, Mr. Nelson, that you object to these documents?

Mr. Nelson: I do. It is a matter which we are not interested in.

Trial Examiner Jaffee: Well, on the present state of the record, I will have to sustain the objection.

Mr. Donovan: We think, Mr. Trial Examiner, that the opinion of the officials of the Michigan Unemployment Compensation Commission making the determination reflected in Company's Exhibit 47, regardless of whether the Trial Examiner accepts them as proof of fact which he recites, are certainly evidence and opinion of official body of the State of Michigan as to the relationship

1709 between the CIO—the close collaboration, if you like, between the CIO and the Foreman's Association of America during the strikes stated by the Foreman's Association of America at numerous plants, including the Petitioner in May of 1944 and that they would

have certainly as respectable weight as the opinions that have been received on the subject from various witnesses from the witness stand. I think they are entitled to be received and to be before the Board.

Trial Examiner Jaffee: How about an opportunity for cross examination?

Mr. Nelson: And an opportunity to be heard on argument. No foremen were called in. That is an ex parte thing completely as to the foremen. Even the decision was ex parte and even the facts cannot be accepted. If you cannot accept the facts, how are you going to accept the opinion? No foreman had an opportunity to be heard in this matter whatsoever, nor was any representative of the foremen present. That is a pure ivory tower and that is the kind of ex parte proceeding that gets the foremen into trouble.

Mr. Donovan: The foremen got themselves into trouble and this is some evidence of it.

Trial Examiner Jaffee: Gentlemen, I have already ruled and I still think the ruling is correct. Mr. Donovan, I may suggest that you can have them marked as rejected exhibits and if the Board thinks that I am wrong
1710 about it, they perhaps may accept them, although they may have to reopen the case to give the Foreman's Association of America a chance to be heard on them, to put in evidence or to rebut it, or something of that sort.

Mr. Donovan: That is, it is theoretically possible that it would still stand as an opinion of an official—an official opinion of the Michigan Unemployment Compensation Commission, even though he disagreed with it?

Trial Examiner Jaffee: We would certainly be in a vacuum then, it would be a bare opinion and nothing else.

Mr. Donovan: That is a matter of argument, Mr. Examiner. If the Examiner rejects the exhibits, I request they be received as he suggests, as rejected exhibits and leave the propriety of the ruling to take its course in further hearings.

Trial Examiner Jaffee: They may be marked rejected

exhibits. You may want the Michigan Act received on the same basis.

Mr. Donovan: I think it ought to go in with these two exhibits. Will you mark this as Company's Exhibit 47-B?

(Thereupon the document above referred to was marked Company's Exhibit 47-B for identification.)

Trial Examiner Jaffee: I would like to comment, taking Company's Exhibit 47-B, which is the Act and which will be marked a rejected exhibit, does not mean that I
1711 am rejecting the Act.

Mr. Donovan: You are not repudiating it here?

Trial Examiner Jaffee: I have nothing against it whatsoever.

Mr. Nelson: It isn't even repeated.

Trial Examiner Jaffee: Company's Exhibits 47, 47-A and 47-B will be rejected.

(The documents heretofore marked Company's Exhibits 47, 47-A and 47-B for identification were rejected.)

Mr. Dahling: Mr. Examiner, the Company rests.

Trial Examiner Jaffee: Thank you, Mr. Dahling. May I ask Mr. Donovan, since the Act seems rather long and the print small, could you point to the particular portions thereof—

Mr. Donovan: (Interposing) I believe section 29 and subdivision C thereof are principally involved, that is, what disqualifies an employee and the determination the Commission has to make whether or not he and his organization was involved in the labor dispute which resulted in his separation of employment and which they found in this case had been so.

Trial Examiner Jaffee: Very well. I understand the Company rests. Does the Union desire to offer any rebuttal testimony?

Mr. Nelson: We have four brief witnesses on strictly
1712 limited rebuttal matters. It will take longer than fifteen minutes and I think we should come back this afternoon for it if we may.

Trial Examiner Jaffee: Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: On the record. We will recess until two-thirty P. M.

(Thereupon a recess was taken until two-thirty o'clock P. M.)

1713 After Recess.

(Whereupon the hearing was resumed, pursuant to the recess, at 2:45 o'clock p. m.)

Mr. Nelson: James Wilkins.

JAMES WILKINS

resumed the stand, was examined and testified further as follows:

Direct Examination.

Q. (By Mr. Nelson) Mr. Wilkins, you were telling me at the recess about an incident of reduction in working force and an increase per man in production?

A. Yes, sir.

Q. How long ago did it occur?

A. In the last 90 days.

Q. In what department?

A. YF Department.

Q. What is made there or what is done in that department?

A. Well, it is an assembling a complete marine motor.

Q. And who originated the idea that an increase per man production could be effected?

A. Well, that is—

Q. (Interposing) You or somebody else?

A. Management asked for time study to be taken in this certain part of the department, and as it went on for a couple of days, why, I seen the way it was going,

1714 and I went to the management and told them I thought it was my duty as a general foreman to go in there and set up the job, and he called the head time study man in return and told him that he thought it was, too, and they both agreed on it, and I went in and set up

the job, and after the job was timed there was 11 men taken out of 21.

Q. 11 out of 21 were dispensed with?

A. That is right.

Q. Did you decrease or increase the production?

A. The production was just the same.

Q. It remained the same?

A. Just the same.

Q. With 10 men as it had been with 21?

A. That is right.

Q. That is within the last 90 days?

A. Ninety days.

Q. You had been a member of the Foreman's Association of America how long when you did that work?

A. Well, practically ever since they was organized.

Q. Well, that would be two years?

A. That is right.

Q. And you are a member now?

A. Yes; sir.

Mr. Nelson: That is all.

Mr. Dahling: No questions.

1715 Mr. Karasick: No questions.

(Witness excused.)

THOMAS SEITZ,

a witness called by and on behalf of the Petitioner, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Nelson) Your residence, Mr. Seitz?

A. 12076 Lambsdown.

Q. How long have you lived in Detroit?

A. For the past 19 years.

Q. Your present employment?

A. Packard Motor.

Q. In what capacity?

A. As a general foreman.

Q. In which department or division?

A. In the SDF Department, or reverse gear.

Q. What is the work done there?

A. Well, it is the machine and assembly of the reverse gear for the marine engine.

Q. In the lunch hour were you telling me about an incident of reduction or increase in production per man?

A. Well, since we started the job—

Q. (Interposing) Well, just yes or no, were you telling me that during the lunch hour?

A. Yes.

1716 Q. How lately did it occur?

A. Well, it occurred over the period since May 1st, 1942.

Q. Was that in your department?

A. Yes, sir.

Q. Were you the general foreman in that department?

A. I was one of them.

Q. You were one of the general foremen in that department?

A. Yes, sir.

Q. Were there other foremen involved in this particular reduction?

A. Yes, sir.

Q. How many?

A. Well, I had four under me and I believe the day man had six under him.

Q. That would be 10 or 12 foremen altogether involved?

A. That is right.

Q. Tell me before you give us the incident, were they practically all of them members of the Foreman's Association of America?

A. They were all members.

Q. They were all members?

A. Yes, sir.

Q. And at all times involved in this narrative you are about to give us?

A. That is right.

1717 Q. Now, tell us what the incident was.

A. Well, when we started this job we had approximately 100 hours per unit to build a reverse gear, and during the course of the job we found ways of improved tooling, rearranging the machines and other things that

enabled us to take out approximately 35 hours of the total of 100, making at the present time around approximately 65 hours to build a motor or reverse gear.

Q. The gear that formerly took a total of 100 hours?

A. That is right.

Q. And that is what, skilled work?

A. Well, it is—I don't know where the line of demarkation between skilled and unskilled labor is. It is machine work and assembly work.

Q. Now, you said "we", who did you include in the word "we"?

A. I included myself, the general foreman on the opposite shift, plus the foremen under us that all had different ideas, and we tried to put them all into effect if possible.

Q. So, you reduced the cost by the difference between 100 and 65?

A. That is right.

Q. How long did it take you to do that?

A. Well, those changes were taking place practically at all times.

Q. You mean you were gradually working them out?

1718 A. That is right.

Q. It was a long process, was it, to work it out?

A. That is right; in fact, one machine in certain cases would suggest another change.

Q. And you kept making them until you attained this result?

A. That is right.

Q. You say that the foremen involved were all members of the Association at all times?

A. That is right.

Q. Now, Mr. Seitz, bearing in mind just what that is an illustration of, are there other circumstances of that kind that you have heard or known about in the factory where the formen took an interest—

A. (Interposing) Yes, sir.

Q. (Continuing) —in reduction of the total amount of manpower required to get the kind of production desired?

A. Yes, sir.

Q. What would you say as to whether that is a general attitude of foremen in the Packard Plant?

A. In my division—

Q. (Interposing) In that period, from two and a half years last past?

A. In my division the foremen were continually discussing ways and means of gaining that end.

Q. Do you regard that as one of the marks of your
1719 loyalty to the interests of the Company?

A. I certainly do.

Q. Have you seen any slackening in that or falling off in the matter since the Association was organized?

A. No, sir.

Q. Are you an officer in the Association?

A. Yes, sir.

Q. And what office do you hold?

A. I am on the Executive Board.

Q. How long have you been a member of the Executive Board?

A. I am on my second term now.

Q. That would be an annual term?

A. That is right.

Q. You not only know the foremen in the shop, then, but you meet them in connection with their interest in the Association and Chapter Five?

A. That is right.

Q. And you had that in mind in giving your testimony here?

A. That is right.

Q. By the way, you once had a very distinguished man working for you, didn't you?

A. Yes, sir.

Q. And you might give us his name?

A. Well, Mr. Patzkowsky used to work for me.

Q. Mr. Patzkowsky used to work for you. Well, I
1720 won't ask you anything about him.

Mr. Nelson: We offer the witness for cross examination.

Mr. Dahling: No questions.

Mr. Karasick: No questions.

Trial Examiner Jaffee: Mr. Seitz, would you say, is it

a fair thing to say, that at least in some instances the smaller the number of people you have to supervise the smaller the number of supervisors?

The Witness: In some instances that would be true; in others not.

Trial Examiner Jaffee: That is to say, it depends on the nature of the work?

The Witness: That is right.

Trial Examiner Jaffee: Any suggestion you might make which would cut down the rank and file to do a particular operation might also cut down the number of supervisors, and might that not result in at least, in that particular instance, in a removal from your division a member of your Association?

The Witness: Well, I have never thought about that situation. It never has arisen.

Trial Examiner Jaffee: Well, as I give you the facts, would you concede that that is a possibility?

The Witness: It would be a possibility.

Trial Examiner Jaffee: Well, suppose you were
1721 faced with that possibility; what would you do?

The Witness: I would still have to go through with the change.

Trial Examiner Jaffee: Why?

The Witness: Well, I figure it is my duty to do that, not only my duty to the Company but to myself to make my department look as good as it possibly can.

Trial Examiner Jaffee: Would your duty to your Union be involved in that at all?

The Witness: My Union, as I see it, wouldn't enter into it.

Trial Examiner Jaffee: Why not?

The Witness: Well, it is something apart from the job.

Trial Examiner Jaffee: Isn't your Union interested in the job?

The Witness: Well, to a certain extent.

Trial Examiner Jaffee: What do you mean by that?

The Witness: Well, as to the general working conditions, wages and hours; other than that it has no connection as far as I am concerned.

Trial Examiner Jaffee: Suppose that a particular fore-

man or assistant foreman under you in your opinion was incompetent or laying down on the job, what would you normally expect to do about it?

The Witness: I would first contact the man to see if
1722 I could correct the condition. If I couldn't correct the condition, I would request his removal.

Trial Examiner Jaffee: Well, suppose he was a member of your Association, then what?

The Witness: Well, that wouldn't have any bearing on it.

Trial Examiner Jaffee: Why not?

The Witness: I don't think the purpose of the Association is to uphold an incompetent foreman.

Trial Examiner Jaffee: If you let him go, you might lose a member, might you not?

The Witness: Well, I would rather not have the member unless he was a good member and if he wasn't doing the job that was assigned to him, I certainly wouldn't have him and he certainly wouldn't be a good member.

Trial Examiner Jaffee: Anything further?

Mr. Nelson: Nothing further.

Mr. Dahling: Yes.

Cross-Examination.

Q. (By Mr. Dahling) Mr. Seitz, if this assistant foreman that you asked to have removed appealed to the FAA, and the FAA disagreed with you and said that he should not be, that he should go back on the job, management refused and the FAA called a strike because management followed out your recommendation, would you go out on strike with them?

1723 A. If the majority went on strike I would have to go with them.

Mr. Dahling: That is all.

Redirect Examination.

Q. (By Mr. Nelson) You believe in the majority rule in the Association, do you?

A. That is right.

Q. As you do in our every-day civic life?

A. That is right.

Mr. Nelson: I believe that is all.

Trial Examiner Jaffee: All right. Next witness.

(Witness excused.)

PROSPER TRAEN

resumed the stand, was examined and testified further as follows:

Direct Examination.

Q. (By Mr. Nelson) Something was said yesterday about a foreman by the name Mayday, Mr. Traen. Did you know Mr. Mayday?

A. Yes, sir.

Q. Was he a member of the Association?

A. Yes, sir.

Q. Was he an officer of the Association?

A. Yes, sir.

Q. At the time of his discharge?

1724 A. Yes, sir.

Q. What office did he hold?

A. He was a member of the Executive Board.

Q. Do you know, without saying any more than you should about another man that isn't here to defend himself, what his trouble was with his employer, do you know what caused his trouble?

A. Yes, sir.

Q. Well, let me ask you bluntly if it was too much drink?

A. That is right.

Q. Was that a fact known to other officers and members of the Association?

A. It was.

Q. Do you know whether, in fact, other members and officers of the Association took it up with Mr. Mayday?

A. They did.

Q. In an effort to help him over his trouble?

A. Yes, sir, they did.

Q. Did they also caution him that if continued he would get into trouble with his employer?

A. That is right.

Q. What did they say as to whether they would support him if he continued with his drinking?

A. They told him if he would continue at the rate he was going that he would get no support from the

1725 Foreman's Association.

Q. When he got into trouble over excessive drinking with his employer, the Packard Motor Car Company, did the Association lend him any aid?

A. They did not.

Q. Did he even come to the Board of which he was a member and ask them for it?

A. He did not. He was cautioned beforehand it wouldn't be necessary to come to the Board, it wouldn't do no good to come to the Board.

Q. He was told that, and, as a matter of fact, he didn't come?

A. Yes.

Q. Now, is it a Mr. Harden that was spoken of here yesterday as having come with Mr. Mayday when he went to excuse himself or relieve himself of the trouble; something of that kind was said here yesterday?

A. I believe it was Mr. Patzkowsky who testified.

Q. Said that Mr. Harden came in?

A. Said that Mr. Harden came in.

Q. Now, whether or not Mr. Harden was at that time an officer of the Association?

A. He was not. He has never been an officer or representative.

Q. Or a representative?

1726 A. No, sir.

Q. If he went with Mr. Mayday on that occasion, he went only as an individual?

A. That is right.

Q. That was his right to do so?

A. Yes, sir.

Q. Was the Association in any wise consulted or involved in the discharge of Mr. Mayday?

A. It was not.

Q. Now, Mr. Traen, as President of the Chapter, does that incident supply or give an example of the attitude

of the Association and its officers towards a legitimate and well grounded discipline of foremen?

A. It does.

Q. That would apply whether the offense of the foreman happened to be the weakness of too much drinking or some other defect?

A. That is right.

Trial Examiner Jaffee: Of course, I might point out, Mr. Nelson, as I did to Mr. Dahling once I think, you are leading a wee bit.

Mr. Nelson: That is probably true, but I thought I might on that question if I let him tell the other himself.

Trial Examiner Jaffee: All right.

Q. (By Mr. Nelson) First let's have that letter,
1727 I don't know the exhibit number, but that letter of application to the UAW for a charter for foremen, it is Company's Exhibit 28-A, is that right, Mr. Traen?

Mr. Dahling: 28-A, I believe, Mr. Examiner.

Trial Examiner Jaffee: That is correct.

Mr. Nelson: That is correct.

Trial Examiner Jaffee: All right.

Q. (By Mr. Nelson) I will show it to you to refresh your recollection, Mr. Traen, Company's Exhibit 28-A. Did you ever see a copy of that letter?

A. Yes, sir.

Q. And where were you when you first saw a copy of it?

A. A copy of this letter was brought to me in my office.

Q. In working hours at the Packard Motor Car Company?

A. Yes, sir.

Q. And by whom was it brought to your office?

A. It was brought to me by Mr. Dubrovich.

Q. D-u-b-r-o-v-i-c-h?

A. That is right.

Q. Who is himself a foreman?

A. He is the supervisor of the clerical, in charge of the clerical end of the D Division.

Q. Was any statement made to you as to where he had received the letter or a copy?

A. Yes, he said he had found it on a foreman's desk.

1728 Q. Unsigned as you have it there?

A. Yes, there was no signature on it when he gave it to me.

Q. You then read it, did you?

A. Yes, sir.

Q. To acquaint yourself with what was in it?

A. Yes, sir.

Q. Did you make any writing on the letter?

A. Yes. I asked Mr. Dubrovich if possible to get me the name of the steward who was in that particular department where he had found this letter, and he did, and when he called me by telephone conversation, he gave me the name, and I wrote the name up in this corner here (indicating).

Q. And the name was what?

A. Timberman.

Q. Did you also put the department designation?

A. I did, ESB.

Q. To show where Mr. Timberman was a UAW steward?

A. That is right.

Q. Representing the maintenance and production workers?

A. That is right.

Q. So, you wrote that in pencil on the letter, did you?

A. I wrote it on the upper right hand corner.

Q. Now, having that letter on hand what did you do with it?

A. I asked Mr. Dubrovich if possible to find more of them if he could. Then I took this letter, the first
1729 letter that I got, and I brought it down to a Mr. Sours.

Trial Examiner Jaffee: S-o-u-r-s.

Q. (By Mr. Nelson) The witness who appeared here?

A. I don't think he was.

Q. He has been in the room, though?

A. Yes, he was in the room.

Q. Some days ago?

A. Yes.

Q. And has been referred to in the testimony here?

A. Yes.

Q. You took it in to him?

A. Yes, sir.

Q. Did you take it up with any other officer of your Association?

A. Well, yes.

Q. Let's take that step first, was that the next step?

A. Yes, the next step was taken with the officers of the Association.

Q. And any of them by name now if you can recall?

A. I might add that there was one more copy found.

Q. And was that found very promptly after the first copy?

A. Yes, sir.

Q. And it likewise was unsigned?

A. Yes, sir.

Q. Neither of these were signed?

1730 A. They were not.

Q. Let me ask you while I am on that subject, whether you ever saw any of those exhibits, Company's Exhibit 28-A, signed by anybody?

A. I did not,

Q. I mean not the actual act of putting down the name, but any paper even after it was signed?

A. I did not.

Q. You never saw it either way?

A. No.

Q. And Mr. Dubrovich got you two copies altogether?

A. Yes, sir.

Q. The one you had written on, as you indicated, you took up with officers of the Association?

A. The one that I wrote on I gave to Mr. Sours.

Q. At once?

A. At once.

Q. Then you got the other one from Mr. Dubrovich, did you?

A. Yes, he gave me the other one.

Q. What did you do with that one?

A. I took it to the officers of our Chapter and then we decided that we had better forward it to Mr. Keys.

Q. The National President?

A. The National President, yes.

Q. What did Mr. Sours do with the one you gave him?

1731 A. He gave us a promise he would bring it right up to management.

Q. Oh, he undertook to take it at once to the management?

A. Well, we asked him to.

Q. You mean, you and the officers of the Association?

A. Yes.

Q. And he did so as far as you know?

A. As far as I know he did so, yes, sir.

Q. Now, you then on the one hand notified management, on the other hand you notified the president of your National Association of the presence of this particular letter in the Packard Plant?

A. Yes, sir.

Q. And what juncture of affairs or what was at hand at the time that letter was found by you; was there any event under way or expected?

A. At that time, yes, the membership was quite a bit perturbed about the recognition issue.

Q. The membership of what?

A. Of our Chapter.

Q. The foremen?

A. Yes.

Q. Were, you say, perturbed?

A. Yes, they were perturbed. In other words, they were talking quite a bit that they couldn't understand

1732 why we couldn't get recognition, and, in other words, they were perturbed, the feeling runs through the officers when the membership is perturbed, it comes to the heads when the membership is perturbed, it comes to the heads immediately.

Q. It is reflected back to you?

A. Very much so, yes.

Q. And you by the word "perturbed" you mean the men were talking about it and were insistent about it?

A. Yes.

Q. Now, had you ever heard tell of this letter before?

A. No.

Q. Had you or anybody connected with the Association

to your knowledge had anything to do with the composition or presence of that letter in the Packard Plant?

A. No, sir, we had nothing to do with it.

Q. Had there ever been any action by the Chapter or the Association authorizing that step or even conniving in it?

A. No, sir.

Q. In other words, had you or the Association, to your knowledge, or anybody in its behalf anything to do with the presence or circulation of that letter in the Packard Plant?

A. No, we did not.

1733 Q. One other event with respect to Company's Exhibit 28-A, after you gave Mr. Sours the one on which you wrote the word "Timberman" and the department designation—what was it, BSD?

A. ESB.

Q. ESB, and you mailed the other copy to the National President of the Association; did you ever see a letter like that again until the day of this trial?

A. That was the only two I ever seen.

Q. Well, but did you see that once more some place else?

A. I seen it here.

Q. Well, any other place, I will say, in the office of any officer of the Company?

A. Yes, I did.

Q. Now, you tell us that circumstance; where was that?

A. I seen one copy like this in Mr. Christopher's office.

Q. He is the president of the Packard Motor Car Company?

A. Yes.

Q. How long after it was brought to you did you see it there if it was afterwards?

A. It was afterwards, but I don't remember the exact date, Mr. Nelson.

Q. Well, I wouldn't ask you for the exact date. Give us in length of time?

A I imagine it was around in April or May, I think it was.

1734 Q. What would that be, a month or something?

A. About a month, maybe not a month, 15 days or so.

Q. 15 days or so?

A. Yes, sir.

Q. That is best recollection on it?

A. That is my best recollection.

Q. I suppose that would yield to some written evidence or something of that kind; that is only an estimate on your part?

A. That is right.

Q. Who was with you when you went into Mr. Christopher's office, if anybody?

A. Mr. Turnbull was with me.

Q. Anybody else, do you recall?

A. Mr. Wilkins.

Q. And anybody else?

A. I think Mr. Tom Pulaski was with us, too.

Q. What was your mission or the subject of discussion or whatever you want to call it?

A. It was the recognition issue.

Q. Recognition of the Association?

A. Yes.

Q. You went in to see the President about it?

A. Yes.

Q. You had a discussion with him, did you?

1735 A. Yes, sir.

Q. And in that discussion was a copy of Exhibit 28-A produced?

A. Yes, Mr. Christopher had one.

Q. Oh, he had it?

A. He had it on his desk.

Q. Had you given it to him?

A. I don't know where he got it.

Q. But he had a copy of that on his desk?

A. Yes.

Q. And what, if anything, was done with it or said about it?

A. I believe at that time that when he showed us this copy, he pointed out, of course, that this is what is going to happen to the Foreman's Association.

Q. That is what he said?

A. Yes.

Q. What is indicated in that letter?

A. What is indicated in the letter, yes.

Q. That is what he said was going to happen to the Foreman's Association?

A. Yes.

Q. He made that statement to you there, did he?

A. Yes, sir.

Q. Did you make any reply to that?

1736 A. I did.

Q. And what reply, if any, did you make?

A. My reply was that by recognizing us and with our combined efforts certainly the CIO would never sign up the foremen and have them as a recognized body for the CIO.

Q. That is your reply to Mr. Christopher?

A. Yes, sir.

Q. Now, from that time until it was produced in this hearing had you ever seen that exhibit, Company's Exhibit 28-A?

A. I never seen it since.

Q. Mr. Traen, Mr. Karasick suggests that I have you fix with sufficient definiteness the exact date, if possible, when you first saw Exhibit 28-A. Can you fix it with more definiteness than you have? You might note the date of it, if it is of any aid to you.

A. I think we could possibly fix it within, say, about the 28th of April, something like that.

Mr. Donovan: Around what?

The Witness: 25th of April is the date on the Exhibit.

Mr. Donovan But he asked you when you fix it.

The Witness: I would say within about three days of the 25th.

Q. (By Mr. Nelson) Within that period?

A. Yes.

Q. That is as nearly as you can fix that date for us?

1737 A. Yes.

Q. Let me ask you the date you went in to see Mr. Christopher as related to the strike, was it before or after the strike?

A. I think it was the day after the strike.

Q. The day after the strike was begun or ended or what?

A. Right after it begun.

Q. What was that?

A. I think it was the day following the strike.

Q. The day following the calling-off of the strike?

A. The calling of the strike.

Q. Oh, the calling of the strike?

A. Yes.

Q. The strike was effective then when you were in his office?

A. Yes, the following day.

Q. Now, was it the day following the start of the strike?

A. Yes.

Mr. Nelson: Is it agreed that the strike started May 3, 1944?

Mr. Dahling: As far as we know that is the right date.

Q. (By Mr. Nelson) Then that would fix this date as May 4, 1944, is that right?

A. That is right.

Q. If you are correct in your estimate of 15 days
1738 from the time you first saw it until you saw it in Mr. Christopher's office, then you would have about the 20th of April as the time you first discovered it?

A. Thereabouts, yes, sir.

Mr. Donovan: When you said "strike", Mr. Nelson, did you mean the strike of the Foreman's Association of America?

Mr. Nelson: I believe at Packard's, is that right, Mr. Traen?

The Witness: Yes, sir.

Mr. Donovan: It was the strike of the Foreman's Association of America?

Mr. Nelson: That is right, it was the strike of the foremen at the Packard Plant.

The Witness: That is right.

Mr. Nelson: Can we refer to this whole bundle of papers as Exhibit 29 now? This is marked 29-B.

Trial Examiner Jaffee: Company's Exhibit 29.

Mr. Dahling: That is part of it.

Mr. Nelson: On here it appears to be 29-B, but we agree that it is 29.

Trial Examiner Jaffee: That is right.

Q. (By Mr. Nelson) Now, a good deal has been said about this rather bulky piece of evidence. You are more or less familiar with it in form, I suppose, Mr. Traen?

A. Yes.

1739 Q. What do you call that?

A. It is labeled routing and operations sheet.

Q. Some testimony has been introduced here to the effect that the details on that are a matter of consultation with foremen. What is your experience in that connection?

A. My experience has been that the details were always made out and were brought down to me for approval.

Q. You mean they were already on the paper?

A. Yes, sir.

Q. What did you do?

A. I looked the operations over and, of course, we checked to see whether we had certain machines available that were mentioned on the sheets, the tools available that are mentioned on the sheets, and if I found them there, found that we were able to run the operations according to that sheet, timed it and returned it.

Q. Now, were you consulted before the details were put on the sheet?

A. I was not.

Q. By anybody?

A. No, sir.

Q. Now, do you know the general practice in Packard in that regard as to whether the foreman is consulted about that before the details are put on the sheet?

A. He is not.

1740 Q. Suppose you don't find you have the tools or the machines, what is the course the foreman follows?

A. Then, of course, you have to contact the proper authorities who follow that particular tool and have them follow those tools up for you before you agree to sign that sheet. When you agree to sign a sheet that means you are ready to go ahead with your production.

Q. It means you have the tools and the machinery on hand?

A. That is right.

Q. And if you don't have them, what can you do about it?

A. You can only contact the men who are responsible for bringing the tools in to you and see that they bring them to you.

Q. If they do, of course, then you are in a position to sign the sheet to indicate that you have them?

A. That is right.

Q. If you can't locate either the machinery, the tool or the material, what course could a foreman follow?

A. Then it would be my suggestion they don't sign the sheets until they are ready to go.

Q. Until they certify that those things are on hand?

A. That is right.

Q. Now, as to the feasibility of the operation other than having these things, is the foreman consulted about whether that is a good way to do it or a poor way

1741 of doing it or anything of the kind?

A. Not to my knowledge.

Q. How long have you been there?

A. 18 years.

Q. Did you ever hear, until you heard of it in this proceeding, that foremen was consulted about it as a matter of determining whether it was the right course or not?

A. The only time the foremen are consulted in my experience has been that when the process man was more or less stuck, then he would come down and look over the department and possibly talk it over with the foreman.

Q. In other words, when he couldn't forecast on this paper or prophesy, so to speak, what could be done, then he would come down here and talk it over with the foreman?

A. That has been my experience.

Q. But is it true that the foreman's responsibility then in the normal course of events is to indicate that he has the tools, the machinery, the material, or can get it when he signs it?

A. That is right.

Q. Have you ever been in the office where these are made out?

A. No, sir.

Q. Do you know of any of their foremen who is known to you to have been in that office where these are made out?

1742 A. Well, I don't know where they are made out.

Q. You don't even know where they are made out?

A. No.

Q. Exhibits 31, 32, 33 and 34 have been the subject of testimony here, Mr. Traen.

Trial Examiner Jaffee: Company's Exhibits?

Mr. Nelson: Company's Exhibits.

Q. (By Mr. Nelson) I hand them to you, Mr. Traen. Have you examined them now?

A. Yes, sir.

Q. Have you had any experience with similar matters?

A. I haven't had much experience with tool changes in that particular phase of operation in the place where I am at this time, and it is applied mostly to the aircraft parts.

Q. That is these forms of exhibits and this type of action is in some mechanical division?

A. That is right.

Q. As you say, aircraft parts?

A. That is right.

Q. And your work is not in that division?

A. My type of work is, as I said before, polishing work, and we don't have any changes to effect us in that particular department.

Q. So, this particular application isn't one that you are particularly familiar with?

1743 A. Not too familiar with.

Q. You would only know it by what other men had said to you about it?

A. That is right.

Q. I guess we will have to refer to Company's Exhibits 35, 36, 37, 38, 39, 40 and 41 without the benefit of having them here before you, but you were here yesterday afternoon, weren't you, Mr. Traen?

A. Yes, sir.

Q. When they were offered in evidence, and you heard the testimony in connection with them, did you?

A. Yes, I heard the testimony.

Q. Did you see the exhibits themselves, I mean you were here at the table?

A. I was at the table.

Q. When they were examined, and did you take a look at them?

A. I don't just recall.

Q. Those requests for tests, gloves was one and oil was another and flux was another?

A. Yes, I remember those.

Q. You remember those?

A. Yes, sir.

Q. Have you had any experience with those?

A. No.

1744 Q. That is not in your department, either?

A. No.

Q. That is, you heard what he said about it, but you haven't any individual experience with it?

A. That is right.

Q. Mr. Traen, did you hear Mr. Patzkowsky read as far as he read on the duties and responsibilities of a foreman; did you hear what he read?

A. I believe that was Mr. Macaulay, was it not?

Q. Oh, Mr. Macaulay. I am sorry. Did I say Mr. Patzkowsky?

A. Yes, you did.

Q. I agree with you, it was Mr. Macaulay. You heard as far as he read, did you?

A. Yes, I did.

Q. You understood there was still a page or two more of it?

A. Yes, sir.

Q. Did you recognize yourself anywhere in that?

A. I am afraid not.

Q. Or any of the other foremen that you have known there in the past 18 years?

A. No.

Trial Examiner Jaffee: I think I should say to clear the record, Mr. Nelson, while Mr. Macauley did in fact read

some three or three and a half pages of what he
1745 termed an analysis of a foreman's job, or analysis of a foreman, and as a result of an off-the-record discussion we struck that physically, and the reporter then copied into the record the actual document itself.

Mr. Nelson: I am not indicating anything to the contrary.

Q. (By Mr. Nelson) But obviously the only thing you would know was the portion that was read?

A. That is right.

Q. Because the copies haven't been made available?

Trial Examiner Jaffee: Merely to tie up the fact with your question. The fact is, we all agree, I assume Mr. Macaulay did read some three pages or three and a fraction pages of that five-page document.

Q. (By Mr. Nelson) And you heard that portion, Mr. Traen?

A. I did.

Q. You haven't had an opportunity to examine the rest of it?

A. No, I haven't.

Q. You have been a foreman some nine years, as I recall it?

A. Twelve years.

Q. Twelve years?

A. Yes, sir.

Q. And you have been there for 18 years?

A. Yes, sir.

1746 Trial Examiner Jaffee: You say you didn't recognize yourself at all?

The Witness: Not in that reading I didn't.

Q. (By Mr. Nelson) Or any other foreman?

A. No.

Q. In the Packard Company in the 18 years, is that right?

A. That is right.

Mr. Nelson: You may cross-examine.

Trial Examiner Jaffee: You claim that there "ain't no such animal"; is that the idea?

The Witness: Not such as he painted.
Trial Examiner Jaffee: All right.

Cross-Examination.

Q. (By Mr. Dahling) Mr. Traen, do you say that you do not interpret the directions and orders and policies of management to the workers as they come down to you?
A. That I do not?
Q. Yes, you don't do anything like that at all?
A. Did I say I did not interpret the directions?
Q. I am asking you, do you?
A. I say I do.
Q. You do?
A. I say I don't say that.
Q. You don't?
A. I do interpret directions.
1747 Q. And you develop and maintain morale, do you not?
A. Yes, sir.
Q. Or try to?
A. Yes, sir.
Q. And you carry into effect the policies of the Company regarding safety?
A. I carry out any orders given to me, Mr. Dahling.
Q. And in the matter of adjusting grievances?
A. As far as we can go, yes.
Q. And you, I believe, in your direct testimony said that you also recommended promotions or you could recommend promotions?
A. We can suggest them.
Q. And you attempt to maintain discipline, do you not?
A. Yes, sir.
Q. You place the right man on the job to the best of your knowledge?
A. Yes, sir.
Q. And you adjust complaints where possible?
A. Where possible.
Q. You see that the workers are placed in the correct classification?
A. We have to do that.

Q. Do you take any personal interest in the worker at all?

A. I do.

1748 Q. And you know your men by name, do you not?

A. Yes, sir.

Q. Don't you plan to keep a steady flow of work in the department?

A. Yes, sir.

Q. And you try to adjust problems arising between the workers themselves so that they will have no trouble in your department?

A. Yes, sir.

Q. You train workers on the job, instruct them as to how to do the job?

A. Yes, the assistant foreman.

Q. That is done under your supervision, however, as general foreman?

A. Yes.

1749 Q. And you can recommend, can you not, that the workers be promoted or transferred to assistant foremen's jobs?

A. We can suggest it to the—

Trial Examiner Jaffee: To the what?

The Witness: To the division manager or assistant division manager.

Q. You, as a matter of fact, do plan your work according to the schedule or the routing sheets that come in to you?

A. Yes, we have those routing sheets to work by.

Q. And you get out your production on schedule?

A. As near as possible.

Q. That is one of your responsibilities?

A. It is.

Q. You see that your operations and processes are performed according to the routing sheet?

A. As near as we can.

Q. And you see that the proper number of people are placed on the job?

A. Yes.

Q. And that material is available?

A. That's up to the stock department.

Q. If it isn't available, you get it into the department or contact someone about it, don't you?

A. I contact the foreman in the stock department.

1750 Q. And you see that the material as it is completed is moved out of your department?

A. The same teps as we had when the stock material came into the department.

Q. You also see that when parts are made, they are made up to standard specifications?

A. We have an inspection for that.

Q. You pay no attention to that at all?

A. Not unless they are rejected by our inspection.

Q. If you thought a man was making too much scrap you would do nothing about it?

A. If they are rejected by inspection I said, Mr. Dahling, I step in.

Q. You step in and find out who caused the trouble and try to correct it, do you not?

A. That's right.

Q. So you would say that you are interested in seeing that the work in your department is done according to specification?

A. Yes.

Q. And you also are responsible for seeing that the quality is maintained?

A. Yes.

Q. And you check with inspection or inspection checks with you to see that quality is maintained, isn't

1751 that right?

A. I check with inspection.

Q. You do check with inspection.

Aren't you responsible for the selection and placement of the workers in your department to do the job?

A. The selection in my department is very limited, Mr. Dahling.

Q. But you do place them on the job, do you not?

A. It is all polishing, so I only have the one classification.

Q. So you wouldn't know much about that?

A. No.

Q. You do, however, look to the proper training of your employes to see they know their job?

A. My employes generally know their job when they come in.

Q. If they don't, what do you do?

A. Well, if they don't know the job, why, there is only one thing to do, Mr. Dahling, and that's to refer them back to the employment department.

Q. Did you ever work in a department where you instructed the workers as to how to do their job?

A. Yes.

Q. And that is the responsibility of foremen in departments of that character, isn't it?

1752 A. Yes.

Q. And you are also responsible for maintaining proper working conditions?

A. Well, there is a representative of the UAW-CIO that takes pretty good care of that.

Q. You have nothing to do with it? Is he in complete charge of that?

A. No, he is not in charge of it but—

Q. You are in charge of your department, aren't you?

A. He takes pretty good care of that end of it.

Q. Aren't you responsible for working conditions in your department?

A. Why, if he complains to me, I eliminate them.

Q. If he doesn't complain you would let your department go to seed and it wouldn't make any difference to you?

A. It is generally in pretty good condition.

Q. You keep it that way, don't you?

A. Yes.

Q. Now, I don't want to take up too much time on this matter, but I have just read to you the first sheet of the analysis of a foreman's job which was copied into evidence in this case and concerning which you said you didn't recognize yourself.

Will you look at that first sheet and tell me if I haven't properly and correctly asked you with re-

1753 spect to the responsibilities set forth thereon.

Mr. Nelson: You mean have you read it correctly? I will agree you did.

Mr. Dahling: Yes.

A. Yes.

Q. You did testify, however, that you didn't recognize yourself as being the person who had these responsibilities, is that right?

A. I did.

Q. You still want to maintain that that is your answer to the question?

A. I never had it pointed out to me where—you might say combed out with a fine-tooth comb like that, I'll tell you that.

Q. But you do say that you have testified that your responsibilities cover all these matters on the first page, isn't that correct?

Mr. Nelson: I don't agree with that. That is not a fair statement of his testimony. He made a number of exceptions.

Mr. Dahling: We will let the record disclose that.

Q. Would you say that it is part of your responsibilities to see that tools and fixtures are properly maintained?

A. Yes.

1754 Q. And to see that the machines in the department are properly maintained?

A. There is a machine maintenance department, Mr. Dahling, that takes care of the maintenance end of it.

Q. If you saw a machine that was out of order, what would you do?

A. I would just put in a call.

Q. You would put in a call, wouldn't you?

A. Yes.

Q. In that sense you would see that your machines were maintained in running order?

A. They would see that they were maintained.

Q. You would originate the request?

A. I would put in the call. That is about as far as I go.

Q. You would watch the machine to see how it is operating, wouldn't you, or your assistant foreman would?

A. The maintenance department, when they are through, they are operating.

Q. But if you found a machine that wasn't operating properly, who would report that to you?

A. I would put in another call.

Q. So you do watch your machines and if they are not operating you use another service to get them in shape again?

1755 A. That's right.

Q. But you say that doesn't give you the responsibility of seeing that the machines are maintained?

A. Yes, the maintenance department takes care of that end of it.

Q. So your answer is that you don't have to see about maintaining the machines at all?

A. All I have to do is report that they are broke down or held up for a fault.

Q. Is it any part of your duty to see that your department is kept clean?

A. Yes.

Q. And also a part of your duty to eliminate scrap?

A. I believe I testified to that.

Q. I think you did. And also to see that the tools are properly used by your workers?

A. Yes.

Q. And avoid unnecessary help in your department?

A. Yes.

Q. And see that the right amount and type of machines are used?

A. No.

Q. That isn't up to you at all?

A. No.

Q. If you felt you had the wrong type of machine in
1756 your department you would go ahead and use it without doing anything further about it, making no report at all?

A. You see, I only have one type of machine in my department, Mr. Dahling.

Q. Have you ever been in any department that had other types?

A. No, I have never been in the machining department.

Q. So you wouldn't be able to answer that question?

A. No.

Q. I believe you said you have made out time exception reports and do make them out?

A. Yes.
Q. Employment record cards?
A. Yes.
Q. Trouble reports?
A. The only trouble report that I make out is to the foreman on the other shift, that is, for running into trouble, I might leave a report to him.
Q. Did you ever make out any shortage reports?
A. No.
Q. Do you know what they are?
A. I imagine you are referring to material shortage?
Q. You make out the labor requisition cards and forms?
A. Yes.
Q. And do you have anything to do with making out
1757 progress reports?
A. No, I don't make out any progress reports.
Q. Are they made out in some departments?
A. No, I don't make any out.
Q. Do you know that they are made out in other departments?
A. Not that I know of, Mr. Dahling.
Q. And you make out the employe rating card or report?
A. I don't quite get it. Employe rating card?
Q. If an employe is cleared from the rolls do you have to send through a card and does that contain his rating or your idea of his ability, and so on? Do you make out that card?
A. His record card?
Q. His record card.
A. Yes.
Q. Do you ever do anything about analyzing the requirements of a job to be assigned to a worker?
A. No.
Q. You just take a worker and put him on the job without paying any attention to deciding whether he can do the work or whether it is the type of job he can do?
A. We put him to work and try him out, yes.
Q. Try him out and if he isn't satisfactory, why, you will ask for another man?

1758 A. That's right.

Q. And do you or the people under you more or less introduce the worker to the job?

A. Well, if you mean putting him on the job is introducing him to it, that's about what it calls for.

Q. You tell him to go over there by the machine, I suppose?

A. We say, "Here is your machine; there is your parts."

Q. If he asks you any questions about the work, you will answer them, I suppose?

A. Certainly.

Q. You say that you don't have to do much instructing in your department?

A. I don't, no.

Q. Do your assistant foremen?

A. Not very much, Mr. Dahling.

Q. There are other departments you would say where there was more instruction?

A. There may be, yes.

Q. You wouldn't know about that. But you do follow instructions in connection with higher management down through to you?

A. Yes, I do.

Q. Without going into this further, Mr. Traen, in addition to these duties you have testified that you have,

1759 these responsibilities and duties, you still have the same duties and responsibilities that you testified to under my cross-examination, isn't that correct?

A. Yes.

Q. Were you ever a polisher yourself, Mr. Traen?

A. No, sir.

Q. But you are in charge of the department that does that type of work?

A. That is right.

Q. Would you say that perhaps one of the reasons you don't instruct the workers is because you haven't the qualifications to do so?

A. I would not.

Q. Coming back to this routing sheet, 29, did I understand you correctly? Did you say that when these sheets came to you they were filled out?

A. Yes.

Q. And someone handed them to you?

A. Yes, or the process man generally hands it to me.

Q. Then what would you do?

A. We check over the tools that are listed and the machines, if there was any machines necessary, and such items that may have to be listed on the process sheets.

Q. And would you go into the various things that had to be done as shown by the process sheets?

1760 A. Yes. We would check and see whether those items were there for us.

Q. Would you check to see whether they could be done in the manner set forth?

A. Yes.

Q. And if you thought it wasn't a proper way to do the particular job, what would you do?

A. I would consult with the process man.

Mr. Donovan: Mr. Nelson, do you mind my asking the witness a question?

Mr. Nelson: Oh, no. I have only one more witness. I was hopeful of finishing today so these men could get back to work. I am afraid production will fall off out there.

Mr. Donovan: I will be brief.

Q. (By Mr. Donovan:) Mr. Traen, you are an officer of the Foreman's Association of America or of a chapter of that organization?

A. Yes, sir.

Q. Which is it?

A. President of Chapter 5.

Q. That is the Packard Chapter?

A. It is.

Q. How long have you been president?

A. This is the second term.

1761 Q. Pardon?

A. This is the second term.

Q. So that you were president of the Packard Chapter during the April and May strikes of the foremen of 1944?

A. I was.

Q. Do you recall those strikes?

A. Yes, sir.

Q. Your chapter had a strike?

A. Yes, sir.

Q. And the Briggs Chapter had a strike?

A. Right.

Q. And the Hudson Chapter had a strike?

A. Right.

Q. And the Aeronautical Chapter had a strike?

A. Right.

Q. The Gar Wood Company had a strike?

A. Right.

Q. And the Bohn Aluminum Company had a strike, or do you know about that?

A. I don't think so. I don't think Bohn Aluminum was involved in that.

Q. All right.

Mr. Nelson: That is when they discharged 25 or 30 out there for joining the Association?

Mr. Donovan: I will ask that that be stricken.

1762 Mr. Nelson: That was at a different time.

Mr. Donovan: I will ask that remark be stricken as having no relevancy here at all, improper. May that be stricken at this point, Mr. Examiner?

Trial Examiner Jaffee: Yes.

Q. (By Mr. Donovan) Mr. Traen, as President of the Chapter, did you preside at meetings of the Packard Chapter in April and May of 1944—this year?

A. Yes.

Q. And do you still so preside?

A. Yes.

Q. How often customarily does your chapter meet?

A. In what form of meeting, Mr. Donovan?

Q. You tell me. What meetings do you have customarily?

A. We have a general meeting about once a month.

Q. Didn't you meet oftener than once a month from the first of April of this year, during April and May?

A. Yes.

Q. You met quite a bit oftener than that, didn't you?

A. Yes.

Q. Where is your chapter headquarters?

A. On Harper near Frontenac.
Q. And what is it, a store, part of a store?
A. It is a hall above a store.
Q. A hall above a store. How many people can you
1763 get in that hall, just approximately?
A. I don't know.
Q. Have you seen the hall?
A. I guess I have. I have been in it.
Q. Yes. That is what I thought you said. Can't you give us any idea how many that hall holds?
A. No, I can't.
Q. How many members approximately did you have in April and May of 1944, during the time of those strikes, just approximately?
A. Oh, I imagine around 800.
Q. Pardon?
A. Around 800.
Q. Around 800?
A. Somewhere there, maybe better than that.
Q. Was that hall open during the daytime or in the evening during April and May of this year or portions of the day and evening as well as the times when you have your regular meetings?
Mr. Nelson: You mean in '44.
Q. (By Mr. Donovan) Your meeting place. Your hall that you were just speaking of?
A. Yes, it was open.
Q. You had people there permanently during the day on duty?
1764 A. No.
Q. You have a secretary, do you not?
A. Yes.
Q. And you have a vice-president?
A. Yes.
Q. Treasurer?
A. No.
Q. You don't have any treasurer?
A. No.
Q. You have committees of various sorts, do you not?
A. No.
Q. No committees. Well, will you state whether or not

during April and May of this year, during the time that the Packard foremen were on strike, striking foremen, customarily gathered in that hall?

A. For general meetings, Mr. Donovan, we met at the Slovak Hall ...., that is, the big meetings were held at the Slovak Hall.

Q. Oh, you had two halls?

A. Yes.

Q. This was the smaller one you were telling me about?

A. Slovak Hall?

Q. No, the one you first mentioned.

A. Oh, yes, yes.

Q. That is the one that you regularly have as your
1765 headquarters?

A. Yes.

Q. Where you keep your books and do hold some meetings?

A. Yes.

Q. Where foremen do gather for things other than a big meeting?

A. That's right.

Q. And you have another hall, Slovak Hall, which is much larger, which you also were using at that time?

A. That's right.

Q. And you still use that hall?

A. Yes, we used it for our last meeting.

Q. Right. Now, do you have any acquaintance with the other chapters of the foremen's organization in the city such as the chapters at Briggs, Hudson, Chrysler, Murray, Aeronautical, and so forth? Do you know any of those men?

A. Do I know any of the men?

Q. Yes.

A. Oh, yes.

Q. Do you see something now and then of the officers of those various chapters?

A. Once in a while, yes.

Q. And did you during April and May of this year?

A. About usual.

Q. And did you during the strikes of April and May
1766 of this year?

A. Yes, I met them.

Q. Ordinarily, what contacts does a president of a chapter and the chapter, too, if you like, have with the National Office of the Foreman's Association of America located in the Barlum Tower in Detroit, Michigan? Do you have any contact with the National Office?

A. Yes.

Q. And did you in April and May of this year?

A. Yes.

Q. What do you mean by contacts? Were you in pretty close touch with the head officers of the Association in the Barlum Tower during the strike?

A. Yes, on occasions I have been downtown here and went in the office.

Q. And on occasion they have had people from their office out at your chapter office, have they not?

A. Yes.

Q. During the strikes, were any of the officers of any of the other chapters attending your meetings or did you attend any of theirs?

A. No.

Q. Have you ever met officers of other chapters down in the headquarters in the National Office in the Barlum Tower?

A. Yes.

1767 Q. And would that have happened during the strike period also?

A. Yes.

Q. Now, you spoke a little while ago in your testimony of the action of the Foreman's Association of America in respect to a certain Packard foreman who had been drinking a little too much and you tried to straighten him out, I believe?

A. Yes.

Q. Was that successful? Did you do so?

A. No, it wasn't successful.

Q. And what happened to that particular man?

A. I believe, if this Mr. Mayday is the one you have in mind, he was discharged.

Q. He was discharged?

A. Yes.

Q. Was any disciplinary action taken with respect to

him by the Foreman's Association of America that you know of other than your participating in procuring his discharge? I understood you to testify that you did recommend that he be discharged if he didn't straighten up.

A. We made no such recommendation, Mr. Donovan.

Q. You didn't?

A. No.

Q. I thought you said if he didn't straighten up you
1768 told him that you wouldn't support him any more?

A. That's exactly what I said.

Q. What did you mean by that, that you would insist on his being there if they thought he should be discharged?

A. No.

Q. What did you mean?

Mr. Nelson: Mayday wasn't under his jurisdiction, Mr. Donovan.

Mr. Donovan: He is the fellow that told us about it. I want his views on what he said.

Q. (By Mr. Donovan) What did you mean by supporting?

A. I mean that if he was discharged by Management that he needn't appeal to us—

Q. (Interposing) Oh, what you meant—

Mr. Nelson: (Interposing) Let him tell you if you don't know.

Q. Go ahead, if you want to add anything to that.

Mr. Nelson: He said he needn't appeal to him when you cut him off.

Mr. Donovan: Let him take all the time he wants.

Q. (By Mr. Donovan) Do you want to add anything to what you have said?

Trial Examiner Jaffee: Go ahead.

A. He said—We said if he was discharged he needn't
appeal to us for any support or any attempt that we
1769 might make in helping retain his job with the Packard Motor Car Company.

Q. I see. So that what you told him was that if he was discharged you wouldn't support him?

A. That's right.

Q. Is that right?

A. That's right.

Q. Did you know of any of the happenings during the foremen's strike at the Briggs Plants or the Aeronautical Products Plants?

A. No.

Q. You didn't know much about that?

A. No.

Q. You didn't know that superintendents were being beaten up and taken down to foremen's halls and forced to sign application cards for membership in your association?

A. No.

Mr. Nelson: Nor anybody else.

Q. (By Mr. Donovan) You never heard of that, is that right?

A. No, that's right.

Q. And if anything of that sort went on, or any intimidation or molestation of employees who wanted to go into factories to work by the striking foremen, you wouldn't know about it?

A. No.

1770 Q. Will you state whether or not to your knowledge there was ever any disciplinary action taken by the Foreman's Association of America against any member since April 1, 1944, to the present time by way of expulsion or fine or disciplinary action for anything that he did in connection with the strike of the foremen in April and May of this year?

A. There was not in our chapter.

Q. Pardon?

A. There was none in our chapter.

Q. Do you know of it being taken by any other chapter?

A. Not to my knowledge.

Q. Or by the National Association?

A. Not to my knowledge.

Q. Did your chapter ever receive any recommendation for disciplinary action of any sort against a member of your chapter?

A. No.

Q. Did you ever hear of any such recommendation coming from the National Office as to any other chapter in the Foreman's Association of America between April 1st and today?

A. Well, I wouldn't know what happened to the other chapters, Mr. Donovan; I can only speak for mine.

Q. You never heard of any such, did you?

1771 A. No, I never heard of any.

Q. That is all. One more question.

Mr. Traen, are you willing or are you unwilling—you may state which the case is—to admit that there may be a great many things going on during a strike, including a strike of your own organization, which you don't know about?

A. You mean outside of my chapter?

Q. Yes, events taking place during the strike?

A. Outside of our own chapter?

Q. Yes, if you want to narrow it that way.

A. There may be outside of my own chapter, yes.

Q. You feel you know pretty well what happened, though, in respect to your own chapter?

A. Yes.

Q. Did you make reports during the April and May strikes periodically to the head office in the Barlum Tower of the Foreman's Association of America?

A. We had no reports to make, Mr. Donovan.

Q. Didn't you have a lot of telephone calls between your office and the head office, Mr. Keys' office, during the strikes?

A. We had a few, not many.

Mr. Donovan: That is all.

Redirect Examination.

1772 Q. (By Mr. Karasick) This place or the places that you used for a meeting hall, Mr. Traen, were they on the property of the Foreman's Association, or were they rented, or what?

A. They were rented, Mr. Karasick.

Q. Have you at any time used the meeting halls of any other labor organization for the purposes of a Foreman's Association meeting?

A. No, these are the only two halls we have used or our own chapter that I mentioned here.

Q. Those are private halls?

A. Yes.

Q. And the rent was paid by your chapter, is that it?

A. Yes, sir.

Mr. Karasick: That is all.

Q. (By Mr. Nelson) Mr. Traen, I am reminded to ask you if on some occasions the Chapter of the Packard Company has used the public schools for meetings?

A. Yes, they have.

Q. Did you pay for that or was that something that the Board extended to you?

A. We paid for it.

Q. You paid for it?

A. Yes.

Mr. Nelson: I believe there is nothing further.

1773 Mr. Donovan: No further questions.

Trial Examiner Jaffee: All right. Witness excused.

(Witness excused.)

Mr. Nelson: Mr. Turnbull.

Trial Examiner Jaffee: Robert F. Turnbull, recalled.

ROBERT F. TURNBULL

resumed the stand, was examined and testified further as follows:

Direct Examination.

Q. (By Mr. Nelson) Mr. Turnbull, did you know of the Mayday situation and discharge?

A. Yes.

Q. You were acquainted with that in what capacity?

A. The first word I got was from Mr. Patzkowsky himself.

Trial Examiner Jaffee: Off the record a minute.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

Q. (By Mr. Nelson) And you heard the narrative of the incident given by Mr. Traen?

A. Yes.

Q. Here this afternoon?

A. Yes.

Q. Was that substantially correct?

A. Yes, that is substantially correct.

Q. Would you add anything, any particular to it
1774 that he overlooked or that you know that he didn't know?

A. No, except that I happened to have contacted Mr. Patzkowsky over some part of the job and he mentioned this man Mayday, and I brought it to Mr. Traen's attention and between us we discussed the situation and called Mayday in front of the Executive Board and told him that he would have to behave on his job or we couldn't do anything for him, and we couldn't come down that sort of carry-on in the work and asked him to improve or it would be his own fault if he lost his job, and that's the last I saw or heard of the man.

Q. No complaint was made?

A. No complaint. He didn't even come near our Executive Board or any—he just left and accepted his medicine, evidently.

Q. And he was a member of that Board?

A. He was a member of the Executive Board.

Q. Now, I want to know whether you mean by what you say about Mr. Patzkowsky that Mr. Patzkowsky knew of the facts and circumstances at that time?

A. Oh, yes. He happened to tell me that Ed Mayday was losing quite a lot of time.

Q. He told you that?

A. Yes. And I believe I passed the remark at that time that we would talk to the man and see what
1775 we could do about it, and that's what action we took.

Trial Examiner Jaffee: Did you discuss with Mr. Patzkowsky the matter of Mr. Mayday's drinking specifically?

The Witness: No. I just spoke over the telephone to him, but we knew that situation ourselves. We had seen that condition with the man ourselves and we were sufficiently convinced of it even without Mr. Patzkowsky telling us. We could see what was going to happen to a man like that.

Q. (By Mr. Nelson) Was it that Mr. Mayday would come to the job intoxicated or that when he was intoxi-

cated he would just stay away, as you understood the complaint?

A. Losing time from the work was the complaint that Mr. Patzkowsky told me.

Q. That he would just stay away?

A. He stayed away.

Q. When he was intoxicated.

A. I think he told me he was a good mechanic but he lost so much time, and we knew why it was ourselves.

Q. Because of your association with him?

A. Yes.

Q. In other words, you knew where the trouble lay?

A. Yes, we knew where the trouble was.

Q. Now, Exhibit 29, that is the letter of application to the Executive Board of the UAW for a Foreman's Chapter—Exhibit 28-A—you saw that, did you?

1776 A. Yes.

Q. You heard the statement of the matter made by Mr. Traen this afternoon here?

A. Yes.

Q. So insofar as it disclosed knowledge on your part of the situation, was that a correct statement?

A. That was a correct statement.

Q. Is there anything you would care to add to that that he omitted or that you know that bears of the subject matter?

A. No, I just discussed the situation with Mr. Traen. I was with him when he took it into Mr. Al Sour, and I also saw it in Mr. Christopher's office the day after we went on strike, and I was there when the remarks were passed in there about that letter.

Q. You mean the same letter?

A. Yes, and the other one.

Q. That one with the Timberman marking on it is the one you are referring to?

A. Yes. And the other one I sent down myself to Mr. Keys, the other copy.

Q. You sent that down as a member of the National Board?

A. Yes.

Q. Now, Mr. Turnbull, had you or anybody to your knowledge connected with the Foreman's Association, either the Chapter or any other part of it, anything to do with the composition or presence of that letter in the Packard Plant at that time?

1777

A. No, sir.

Q. Or at any other time?

A. No.

Mr. Donovan: He can't speak for all other foremen obviously on a thing of that kind. So far as he knows, for what it is worth, all right, but I certainly object to the answer being received when—

Mr. Nelson: (Interposing) I said, anybody connected with the Association to his knowledge having anything to do with it.

Q. Your answer was—

A. (Interposing) I will go this far, that we did check with practically every member we knew and we could not find one member of the Association that knew one thing about it.

Trial Examiner Jaffee: The answer may remain.

Q. (By Mr. Nelson) Did you ever see any letter like that with any signature on it?

A. No.

Q. They were all unsigned so far as you know?

A. Yes, just two of them.

Q. To put it the way I want to argue it, frankly, nobody ever signed it so far as you know; is that a fact, or isn't it?

1778

A. That's a fact.

Q. Now, you and Mr. Traen and Mr. Duprovich are shown by the record here to have handled it on behalf of the Packard Foreman's Association, Chapter 5. So far as you know, is that all of the persons who had to do with it on behalf of the Association besides Mr. Sour? That is, foremen. Did anybody else have anything to do with it that you know of?

A. Mr. Tom Seitz was with us when we took it in to Mr. Sour.

Q. Oh, he has been a witness here?

A. Yes.

Q. The man who testified this afternoon?

A. Yes. And Mr. James Wilkins, and Tom Pawlowski were also with us in at Mr. Christopher's office when we saw it there.

Q. Is that all of the members of the Association to your knowledge that have seen or had anything to do with this letter?

A. Yes.

Q. And under the circumstances stated here on this record?

A. Yes.

Q. By this letter, I mean Company's Exhibit 28-A.

I have here Company's Exhibits 31, 32, 33 and 34 which I think you have seen as they have been offered in
1779 evidence; is that true, Mr. Turnbull?

A. Yes.

Q. And, by the way, have you had experience with similar matters in your department?

A. Well, I have had experience with them, Mr. Nelson, but I have never bothered—I have never filled them out myself. Now, if I had the job or the job wasn't running right and there was a change needed, the first thing I would do would be to call the process man and the process man—I might explain to him that I thought this wasn't running correct or suggest maybe some little change, and if he saw fit he would put out one of these changes or recommendation of a change. I never did even see this form myself, to tell you the honest truth. I don't think it is the same one. I have seen one but it struck me it was a different form than this that they had in our place. As far as making them out is concerned, I never once made one of them out. The process man would do them and he would get the change approved by his superiors and put the change into effect.

Q. Do you refer to the form, Exhibits 31, 32, 33, and 34?

A. Yes. I never fill in any of them.

Q. You never had any experience with any such thing?

A. No.

Q. How long have you been there?

A. I have been with the job right from the very
1780 start of the Rolls Royce job.

Q. The Rolls Royce job?

A. Yes.

Q. Do you know anybody else that ever filled out one?

A. The only man I knew filled them out is the process man in my experience.

Q. Are you telling us that just by your experience in the factory or are you adding to what you heard from other foremen?

A. That's just my own experience.

Q. Have you ever in your discussions with other foremen—and, by the way, you are a National Board Member and member of the Executive Board and have been for how long?

A. Yes, since the start of our chapter.

Q. Two years and four months?

A. Yes.

Q. Have you ever seen or heard tell of such documents as these, 31 to 34?

A. As I say, I have seen one of the forms in there, but to my knowledge, it had a heavier print on the top of it than what this has, a request for engineering change it is called, and it is filled out by the process man, and any tools that are needed for it, he has to get the prints changed and everything for that job. He gets approval of it himself. There is a process man in the divi-
1781 sion and any trouble like that, you call the process man and he looks into that himself and he will make the changes or suggested changes. You might discuss it with him but he makes the change.

Q. You mean by that without any reference to the signature of the foreman at all?

A. I never signed any that I know of.

Q. You are in the mechanical department where things of that kind do arise?

A. Oh, yes.

Q. Exhibits 35 to 41, both inclusive, Mr. Turnbull, are not here, but you remember they were three or more sheets?

A. Yes, sir.

Q. With the typewritten form sheet on the face and then came down to some complaint or test that was requested. Have you ever had any experience with those sheets in the period you have been there?

A. No. The same thing applies to a change like that, Mr. Nelson. Anything that is tried out or that we have had to try out has been brought to us by the engineering department, or something like that, and they will ask us, "Will you try this?" And we have always said, "Put a query out on that," or something to that effect, and we will try it, but we won't without a query. And they will get a query and that is signed by the inspection de-

1782 partment or by the manager of the division that it is okay for us to go ahead with a test, and we can't dare go ahead with a test just because somebody tells us and I cannot recommend a test. I don't have anything to do—

Q. (Interposing) Did you sign one of these sheets?

A. No, never saw them before.

Q. And never heard of it before?

A. No.

Q. And by before you mean until you saw it in this—

A. (Interposing) Until I saw it here I never saw one before.

Q. In this proceeding?

A. That's correct.

Q. You say you have been with the Rolls Royce job ever since it began?

A. Ever since it started.

Q. Does that refer to your experience solely as a foreman or your entire experience in the shop?

A. My entire experience, and I started with practically the first job and was the first one on the supercharger line, and as another man came in I had to train him, as the next one came in, I trained him until we got enough that I became a leader; and then as we got more, I became an assistant foreman, and so on up, and I never saw those things yet.

1783 Mr. Nelson: We offer the witness for cross-examination.

Cross-Examination.

Q. (By Mr. Dahling) Mr. Turnbull, are you on the night shift?

A. Yes.

Q. How long have you been on the night shift?

A. Just since the 18th of March, 1944.

Q. Prior to that time, what shift were you on?

A. On the day shift.

Q. You say you have never seen any of these requests for tests?

A. Yes.

Q. Do you mean by that you think they are not used at all?

A. Oh, they are evidently used somewhere when they are shown here. I imagine, Mr.—

Q. (Interposing) You don't think those are forgeries?

A. Oh, no.

Q. The signatures of the foremen?

A. No.

Q. And you don't think that Mr. Macaulay was telling a lie when he testified?

A. No.

Q. That they were used and requested?

A. Oh, no.

Q. Your testimony is that you hadn't experienced them?

1784 A. I haven't experienced them and the procedure I seen used has been very different to the procedure of those sheets.

1785 Q. That is the procedure that you have observed in your particular department?

A. Yes, in my department.

Q. You don't want to say that that is the procedure which is uniform throughout the plant?

A. Oh, no. I can only talk of the division I am in on that procedure, which is the aircraft division.

Mr. Dahling: No further questions.

Mr. Nelson: I think that is all, Mr. Turnbull.

Trial Examiner Jaffee: Witness excused.

(Witness excused.)

Mr. Nelson: That is the Petitioner's case, Mr. Examiner.

Trial Examiner Jaffee: Is there any surrebuttal?

Mr. Dahling: I wonder if we could have a few minutes to discuss one matter?

Trial Examiner Jaffee: Yes, certainly. We will take a ten-minute recess.

(A recess was taken.)

Trial Examiner Jaffee: On the record.

Mr. Nelson: Mr. Examiner, I move for leave to re-open and I desire to offer in evidence Petitioner's 46, Union membership and collective bargaining by foreman, Bulletin No. 745 of the Bureau of Labor Statistics of the United States Department of Labor. And that is the only purpose of reopening.

I offer the document to Mr. Dahling.

1786 Mr. Dahling: Mr. Examiner, I would object to Exhibit 46 as being irrelevant, containing irrelevant and immaterial matter, apparently relates to Unions in others branches of industry which are not comparable to the mass industry of the automotive business.

Trial Examiner Jaffee: It is received.

(The document referred to was marked and received in evidence as Petitioner's Exhibit No. 46.)

Trial Examiner Jaffee: May I point out that other than for Company's 47-A and B, which were rejected, both the Petitioner and the Company are now even on exhibits, the last exhibit being 46 in both cases. You were running neck and neck for awhile.

Mr. Donovan: I hope that will not be reason for excluding the one which I am now about to offer.

Mr. Nelson: I think it is an excellent reason.

Mr. Donovan: Mr. Trial Examiner, I desire on behalf of the Packard Company, a similar request as Mr. Nelson's, to move that the Examiner reopen our case to the extent of permitting an offer of evidence which I will now have marked as an exhibit.

(The document referred to was marked for identification as Company's Exhibit No. 48.)

Mr. Donovan: It will become and is Company's Exhibit

No. 48. This exhibit, Mr. Trial Examiner, is the
1787 brief filed by counsel for the Briggs Manufacturing Company, Hudson Motor Car Company, Garwood Industry, Incorporated, and Aeronautical Products, Incorporated, in the matter between those companies and the Foreman's Association of America before the National War Labor Board and the Foreman's Panel thereof, in Case No. 111-4746-D.

It is the brief of counsel for those companies in that hearing, which was a hearing as I believe is elsewhere and earlier reflected on this record in the nature of an examination into the situation of foremen in the Detroit area with particular reference to the plants mentioned. For its informative contents to the Examiner and to the Board and its relation to the issues in this case dealing with foremen I ask that it be received in evidence.

Mr. Nelson: I object to the receipt of a brief in another proceeding in evidence. I don't see any end to that, and I don't think a brief in a panel proceeding under the auspices of the National War Labor Board has anything like either the relevance or the authenticity as a Federal Department of Labor Publication. I don't agree that my brother has produced a document of anything like equal authenticity. I more than return his objection to the introduction of the document. I object to it as irrelevant, immaterial, and wanting in authenticity.

In brief, in reply to that offer, my reply to that brief was not offered. I suppose that is just a little slight
1788 Mr. Donovan didn't intend to extend to me. I replied to that brief and did it both orally and in writing.

Mr. Karasick: I would like merely to point out, Mr. Examiner, that a glance at the brief itself shows that the Packard Motor Car Company was not even a party to the proceeding that was involved in that case.

Trial Examiner Jaffee: I notice, however, that Mr. Donovan was.

Mr. Karasick: That may be. Counsel may have been but this Company was not.

Mr. Dahling: As a matter of fact, Packard Company was one of the companies involved in that same proceeding.

Mr. Karasick: It doesn't possibly appear on the title of the brief.

Mr. Dahling: This brief, however, was not one that Packard Company filed.

Mr. Donovan: This brief was not the brief of the Packard Company but it was the brief of the companies enumerated, and the Packard Company was one of the companies involved before the War Labor Board's special panel in that case and, of course, so far as the Petitioner's just recently offered exhibit being a pamphlet or a writing of some sort from the Bureau of Labor and his suggestion of an unfavorable comparison as the writer's opinion therein expressed with the opinions of the writers
1789 of this brief, it seems rather difficult for me to conceive of the Trial Examiner drawing a distinction in excluding the one and receiving the other on that basis.

Trial Examiner Jaffee: The exhibit which is now Petitioner's Exhibit 46, as has been indicated, is a publication of the Bureau of Labor Statistics of the United States Department of Labor. It is indicated thereon that it was written, or perhaps I should say submitted on June 9, 1943. That Bureau is or is at least supposed to be impartial. It is no reflection on counsel to say that counsel are not impartial.

Mr. Nelson: It would be a reflection to say anything else, Mr. Examiner.

Trial Examiner Jaffee: I think you are correct.

Mr. Donovan: Is it because of the official character of the publication of Petitioner's Exhibit 46? Is that what the Trial Examiner refers to?

Trial Examiner Jaffee: This is one of the things I have in mind—

Mr. Donovan: If that is so, Mr. Trial Examiner, I think by the same token that we would like to have the Trial Examiner reconsider his ruling on the admission of Company's offered Exhibits 47 and 47-A which were received in a rejected record because it is not questioned as to
1790 the fact that they are authentic official communications; in fact, determinations from a Body of the State of Michigan to wit, the Michigan Unemploy-

ment Compensation Commission, and they derive such authority as is accorded that official status.

Trial Examiner Jaffee: But I point this difference out, Mr. Donovan: In the case of Petitioner's 46 we have or, at least, we purport to have a survey of the particular subject covered by the title of the Exhibit, namely, Union membership and collective bargaining by foremen; whereas, in the case of Company's Exhibit 47-A and B you have the determination of an intermediate officer with reference to a particular individual case to which none of the parties here are involved. I think there is quite a difference between the two situations.

I may also point out by way of addition we also have in evidence at least one other publication of the Department of Labor, namely, that blue pamphlet, The Foreman's Guide.

Mr. Nelson: That ivory tower production.

Trial Examiner Jaffee: Yes. The item which Mr. Nelson has referred to as being produced by someone sitting in an ivory tower.

Mr. Donovan: There is no evidence here as to what kind of a tower the author of Exhibit 46 was sitting in when he wrote that.

1791 Trial Examiner Jaffee: Let me say that it is customary or it has been customary in appropriate situations to receive into evidence documents of that type, that is, of the type of Petitioner's Exhibit 46. I don't doubt but that Company Exhibit 48, for identification would undoubtedly contain material which here and there at least might very well be of some help and if Mr. Nelson had not opposed its introduction, I assure you I would not have interposed any myself, but since he objects and since I think it is incompetent, I am afraid I should have to reject the offer of the exhibit.

You may have it marked as a rejected exhibit, if you wish.

Mr. Donovan: I should like to have that done.

(The document heretofore marked for identification Company's Exhibit 48 was rejected.)

Mr. Nelson: I should balance up now with Mr. Donovan on this exhibit business and have Exhibits 31 and 32 on

the rejected list. They are with reference to the experience of the British foremen's unions. I offered them previously; they have not been received in evidence. I don't want him to carry around a rejected basket that is half empty. I would like to put them in.

Trial Examiner Jaffee: I may point out that if my memory serves me correctly, in those particular cases there is no concession on the record that those particular
1792 documents you have in your hand are in fact what they purport to be.

Mr. Nelson: I will ask him if he won't concede that in view of my extreme liberality in that regard. I guess I have been confronted with everything in print nearly, and I don't think they question the authenticity of those publications.

Mr. Donovan: Well, Mr. Trial Examiner, I would not feel justified in disturbing the record disposition made of these exhibits. It received a full discussion by counsel respectively for the parties before the Trial Examiner and a formal ruling was made, and I don't feel that I should disturb that.

Trial Examiner Jaffee: All right. However, I grant as a matter of course any request that an exhibit be put in the rejected exhibit file, and the last two mentioned may be put into the rejected exhibit file.

(The documents heretofore marked for identification Petitioner's Exhibits 31 and 32 were rejected.)

Mr. Dahling: Mr. Trial Examiner, I understand that the Petitioner's case is now closed and that the case is now closed.

Trial Examiner Jaffee: I don't know. Sometimes counsel have motions they want to make, or something.

Mr. Dahling: I have a motion that I would like to make at this time. I wish to renew at this time the
1793 motion that was made by counsel for the Company at the close of the Petitioner's case. I will not repeat the motion, I think you are familiar with it, Mr. Examiner.

Trial Examiner Jaffee: Yes.

Mr. Dahling: But I wish as a matter of record to again make the same motion.

Trial Examiner Jaffee: Very well. That was a motion to dismiss on three or four stated grounds.

Mr. Dahling: Yes, and they appear in the record. It was made at the close of the Petitioner's case.

Trial Examiner Jaffee: For reasons I am sure counsel will recognize, I again will have to refer the matter to the Board for ruling.

Are there any other motions?

Mr. Nelson: I think of nothing further.

Trial Examiner Jaffee: I want to point out, Mr. Nelson, that the record stands at the moment this way: at the moment you have a request for one unit of certain grades of foremen. Does the Union care to suggest any alternative position in respect thereto?

Mr. Nelson: I should say on the record, Mr. Examiner, that if the alternative is dismissal of the petition I would prefer the Board to go further, and I would say that only in that event, however, would we consent, at least for the time being, with more than one unit at the plant
1794 of Packard.

Trial Examiner Jaffee: You mean by that, that you would consent for the time being or that you are objecting to more than one unit?

Mr. Nelson: We would object to more than one unit, but assuming that the Board reached the view that the only alternative to one unit—if there was an alternative other than dismissal to the one unit, we, of course, would entertain that determination.

Trial Examiner Jaffee: Suppose or assume, counsel, that the Board takes the position that more than one unit is proper but that it is proper only in the event your organization makes what the Board deems as proper provision for separation? You have any objection to that aspect of the matter?

Mr. Nelson: I mean to indicate by what I say that we would take the steps required for separation.

Trial Examiner Jaffee: For instance, as I recall it, at least one Board member indicated in one opinion, if my memory serves me correctly—I have in mind, for instance, a dissent by the Chairman wherein he pointed out in one case—I think it was the Cramp Shipbuilding Case—that a particular union involved—

Mr. Karasick: May we be off the record, Mr. Examiner?

Trial Examiner Jaffee: Just a minute.

1795 I will change that. It is not a dissent, it is a special concurrence.

The Chairman pointed out in that case certain so-called lead men or leading men were grouped in what was referred to as a cell within a local representing the production and maintenance employees. In that case there was that single unit, and that fact was, nevertheless, that the approval of a contract had to be obtained from the votes of the entire local in which the leading men were outnumbered thirty to one.

Now, that might lead to an inference that if any unit or units are proper here at all you might have to make internal separation within your organization whereby if more than one unit is appropriate, general foremen might or should vote on proposed contracts by themselves, foremen by themselves, and so on.

Do you have any position you care to take in that respect?

Mr. Nelson: The Examiner seems to indicate a separate election as to certain features, say, of one contract, or a separate contract, or a separate local of the Association.

Now, I haven't any idea which of those forms the Board if it should make this error, frankly, and I speak with due respect, I hope—we would still regard it as an error on experience—I wouldn't know which form that

1796 would take. But some suitable separation could undoubtedly be arranged. In other words, I do not take the position in the case that separation of these various grades is impossible; it is possible, and in preference to a dismissal of the petition we would take suitable steps to arrange the separation either by some subdivision within the chapter or a separate chapter or some separation in the contract or some separation in the voting on the contract. Those are all possible means. I suppose they are not exhaustive, there might be other means of working out such separation as the Board might think necessary to properly take care of the matter.

Trial Examiner Jaffee: Referring to something the

Chairman said in the Cramp Shipbuilding Case, I merely pointed out as one possibility—I appreciate the fact there may be others if the Board ever gets that far in this situation at all.

Mr. Karasick: In order that the record may be clear and that I may be sure I understand Mr. Nelson clearly, may I ask him if his position really is this:

First, the foremen desire a single bargaining unit comprising the four classifications of foremen involved in this proceeding; second, if the Board in determining the issues in this case were confronted with a feeling that separate units of these classifications of foremen
1797 should be set up instead of a single unit, or the alternative, dismissing the petition, that the Foreman's Association position then would be that rather than have the petition dismissed it would consent to the separate units in the direction of elections of each of those units but would prefer still, of course, the single unit; and, third, that if the Board feels that it would be necessary to set up certain changes in the organization of the Foreman's Association, it is for such separate units that the Foreman's Association would comply with those directives or requirements of the Board.

Is that in substance your position?

Mr. Nelson: I think I should answer yes to that question.

Mr. Karasick: I wanted to be sure that I understood and that the record was clear.

Mr. Nelson: May I make one observation in this connection?

Trial Examiner Jaffee: Proceed.

Mr. Nelson: I don't want this to be taken as any incitement to apply to the Company, but my own belief is from my contact with companies in these matters that the simpler form the organization of the foremen take, assuming that the whole thing is unpalatable, the simpler, more unified it is, the less unpalatable it is to the companies.

In other words, I think the companies would ulti-
1798 mately join us in feeling that the single unit within certain limitations was the preferable form. However, I don't assume to speak for them. I simply say that

that is my fixed judgment on my contacts with the companies in this matter. I say that for whatever assistance it may give to the Board in arriving at their decision.

Trial Examiner Jaffee: In other words, you are saying to us the common law analogy: If the Jury ever gets to the question of damages, why, that is the way it ought to be decided.

Mr. Nelson: That is about it and we trust that this Jury reaches this stage without baffling itself too much about the differences and levels of supervision. Practically it hasn't caused any trouble so far. I don't know the situation in Cramp Shipbuilding, but I think it was a situation of rival unions. There was the situation of the production and maintenance workers mixed with supervision, the leader there being in effect a supervisor.

1799 Trial Examiner Jaffee: That may not have been a good example. I just picked it out of the air.

Mr. Nelson: I read Chairman Millis' dissent in that case, that is, his special concurring opinion in that, but I would say that experience in mass production industry like the mother industry and steel industry doesn't bear that out.

However, I don't want to extend the record. I answered and I don't mean to weaken my answer to Mr. Karasick's question in any respect.

Trial Examiner Jaffee: The only thing I have left, gentlemen, has to do with, first, the question of briefs and, second, the question of errata.

So far as the errata is concerned, I have had typed this afternoon a list of those I have found in the record, together with certain ones Mr. Karasick has submitted; and also a separate partial list submitted to me by counsel for the Company. The list that I have had typed up is fairly long, consisting of eight pages. I am sure that there are undoubtedly other items that we would find later and which we would want to suggest as errata or which we might want to suggest as errata, and it is my thought that we may possibly agree as far as we have gotten and then a list of the errata thus far agreed upon might be put into the record as an exhibit, with the understanding

1800 expressed on the record that in the event further errata are found which any party or the Board

wants to suggest, they may do so appropriately and within an appropriate time.

Off the record a minute.

(Discussion off the record.)

Trial Examiner Jaffee: On the record.

We have had some discussion off the record with reference to the procedure the parties will follow in connection with errata. It has been indicated that I would give to counsel copies of the errata that I have had typed up and they will look them over overnight and we will meet tomorrow at nine-thirty and dispose of the matter of the errata.

As far as briefs are concerned, gentlemen, what is your desire?

Mr. Dahling: On behalf of the Company, of course, we desire to file a brief.

Trial Examiner Jaffee: And the Association does, too, I presume?

Mr. Nelson: If they do, I will. I don't know that I can be of any great assistance to the Board and I have got so many courts waiting on me that I am going to be in trouble the minute I step out of here and I, as you know, have had a very heavy cold while I have been here. I am sorry I have not felt like doing the usual amount of work.

1801 Trial Examiner Jaffee: There is no law which compels you to file a brief.

I point out to you gentlemen that as I assume you are aware, under the rules and regulations of the Board you have seven days from the close of the hearing, which in this case will presumably be tomorrow, to file briefs. I would assume, and I think it is a pretty good guess, you would want more time than that, in which event I suggest you write to the Board with reference to the matter, making your request, addressing the request care of Mr. Iver Peterson, Assistant General Counsel. That is National Labor Relations Board, Washington, 25, D. C.

Off the record.

(Discussion off the record.)

Trial Examiner Jaffee: We will recess at this time until nine-thirty tomorrow morning in this room.

(Whereupon at 5:25 o'clock P. M., Wednesday, January 3, 1945, the hearing was adjourned until tomorrow, Thursday, January 4, 1945, at nine-thirty o'clock A. M.)

1802

Room 853 Federal Building
Detroit, Michigan
Thursday, January 4, 1944.

Pursuant to adjournment, the above-entitled matter came on for hearing at 9:30 A. M.

Before:

Samuel H. Jaffee, Trial Examiner.

1804

PROCEEDINGS.

Trial Examiner Jaffee: We will resume, gentlemen.

Mr. Dahling: Mr. Examiner, at this time I would move the Examiner, if such a motion is necessary, to reopen the case for the purpose of having placed in the record excerpts from radio speeches made by Robert H. Keys, as president of the Foreman's Association of America. The speeches that I have in mind were exhibits offered by Robert H. Keys in a proceeding before the War Labor Board this past summer. In that proceeding, Packard was one of the companies. There were, of course, a number of others. The Packard case number in the War Labor Board proceeding was number 111-5436-D. These speeches were marked Exhibit 24 in that proceeding. They were offered in evidence by Mr. Keys personally and were admitted in evidence. The speeches are numbered consecutively from 1 to 26. The first group, the numbered group that I have mentioned, covered the period February 24, 1943 to February 24, 1944. There are the additional speeches covering the period, March 2, 1944 to May 25, 1944. I have the speeches before me here. They are a copy of the exhibit 24 in the War Labor Board proceeding which were handed to me as the Foreman's Association of America exhibits. I have marked in the various speeches the parts which I desire to read into evidence in this case.

1805 Trial Examiner Jaffee: Read into evidence?

Mr. Dahling: Read into evidence in this case or to be considered in evidence in this case.

Trial Examiner Jaffee: Well, are you offering only that portion of the speeches or the complete speeches?

Mr. Dahling: I am offering only that portion of the speeches which are marked in these booklets. It is the position of the Company that as stated in, I believe it is Exhibit 3, which is the Examiner's statement in R cases, that one of the purposes of the hearing is to determine the nature and character of the organization, and the excerpts we have marked in these speeches being statements made by Mr. Keys as president, have a direct bearing on that point.

Furthermore, other exhibits or, I should say, excerpts deal with the question of solicitation of membership which was testified to by Mr. Keys, in taking the position that there was no solicitation. The excerpts are also pertinent in connection with the relation of the Foreman's Association of America with the Union movement generally and are pertinent for the further reason of indicating an attempt on the part of the Foreman's Association of America, through their president, to indoctrinate the foremen with antagonism toward the companies and those are our reasons, and of course, there are other general reasons.

Trial Examiner Jaffee: First, is there any objection
1806 to the motion to reopen?

Mr. Nelson: There is, because there is objection to the offer of testimony. I think it is a belated request. As a matter of fact, there could be nothing new or surprising about this, and it must have been known to counsel long before today. Mr. Keys has been available repeatedly and has been on the stand repeatedly, and I would be unwilling to have the Examiner receive these at this belated time. Therefore, I oppose the motion to reopen; it is too late, I think.

Trial Examiner Jaffee: The motion to reopen is allowed. What do you have to say with respect to the receipt in evidence of what might be termed the collective works of Robert H. Keys?

Mr. Nelson: I object; it is too late in the hearing.

Trial Examiner Jaffee: We are past the argument of lateness. I have allowed the motion.

Mr. Nelson: I am not addressing myself to the reopening. I am objecting to the receipt of this in evidence.

Trial Examiner Jaffee: On what ground?

Mr. Nelson: There is not sufficient proof of its authenticity and there is no witness on the stand. The witness alleged to have made these statements has been a witness in this case repeatedly and he is not here now. I am unwilling to have fragmentary things he said or did
1807 offered or received in this manner.

Trial Examiner Jaffee: Do you dispute the fact that the—what looks like pamphlets from here—are, in fact, the speeches delivered by Mr. Keys at the time mentioned by Mr. Dahling?

Mr. Nelson: I do not know. I do not see how anybody else could know.

Mr. Dahling: I would hesitate to take the stand in this case, but, if necessary to prove that fact I can, of course, be sworn to testify that these exhibits came to me as attorney for the Packard Motor Car Company as an exhibit of the Foreman's Association of America in the War Labor Board proceedings, and that they were offered in those proceedings by Mr. Robert H. Keys, as president, who conducted the proceeding in person.

Mr. Nelson: Unfortunately, I never heard any of the addresses by Mr. Keys on the radio. I do not happen to be one of those persons who listens to the radio. I know nothing about the authenticity of them. I have Mr. Dahling's word for it. The Examiner asked if I contest it. I just say it is not established and I point out that this is not a proper method of impeaching Mr. Keys, and that is all it could be offered for properly in this case. It is not legally receivable nor considerable for that purpose,
1808 and that is the purpose which he frankly states he offers it for.

Trial Examiner Jaffee: Of course, I have to take this one step at a time. Obviously, I have to get some basis to indicate the authenticity of the documents before I pass to the next question.

Mr. Nelson: I am going to decline to agree on any au-

thenticity, as not being established. I am not going to give them any kind of help at all, because this is an unfair attempt to impeach a witness. Or, it has no meaning at all. If it is to impeach a witness, it is not proper; the witness is not on the stand, he is not available. He has been on the stand repeatedly in this hearing and he has been available repeatedly in this hearing. The statement of counsel would indicate he has had these documents since last August, and therefore, it is no surprise to counsel. To offer this now as an attempt to impeach Mr. Keys, I am not willing to assist in any regard. I decline to stipulate anything in connection with it. I am not admitting, by even an inference, that they would impeach Mr. Keys. These have nothing to do with the present issue and they are improperly offered.

Mr. Dahling: I presume the next move would be, then, to be sworn as a witness in this proceeding.

Mr. Nelson: I would oppose that also.

Trial Examiner Jaffee: On what ground?

1809 Mr. Nelson: Mr. Dahling is counsel in this case and it is one of our rules in the State of Michigan that active counsel do not prove the cases.

Trial Examiner Jaffee: It does not occur very often, but we have taken evidence of counsel, and in view of that custom I see no reason why counsel should not testify on the point he apparently wishes to bring out in evidence.

Mr. Donovan: Mr. Trial Examiner, after the offered exhibits have been marked with a number for identification as bearing likewise on the preliminary question of the authenticity, I desire to make a statement in regard to the offer in evidence.

Trial Examiner Jaffee: I assume they have been marked for identification. They would be Company's Exhibits 49-A through 49-MM.

(The documents above referred to were marked for identification of Company's Exhibits Nos. 49-A through 49-MM.)

LOUIS F. DAHLING,

a witness called by and on behalf of the Company, being duly sworn, testified as follows:

Direct Examination.

The Witness: My name is Louis F. Dahling, D-a-h-l-i-n-g.

I am in this proceeding one of the attorneys for the
1810 Packard Motor Car Company. It is with a great deal of reluctance that I have been sworn and am taking the stand at this time, but I feel that for the protection of my client, it is necessary. I appeared as counsel for the Packard Motor Car Company in a proceeding before the National War Labor Board, entitled, "In the Matter of Packard Motor Car Company and Foreman's Association of America, Case No. 111-5436-D."

That proceeding was before a panel appointed by the National War Labor Board, and a number of other companies, likewise, appeared.

The Foreman's Association of America in the Packard proceeding and in a number of the other cases, to my knowledge, because I attended a number of the meetings, was represented during those meetings with the exception of the first day and perhaps a few days at the end of the hearing, which extended from in the spring until in the fall, by Mr. Robert H. Keys, the President of the Foreman's Association of America.

The pamphlets which are marked for identification Company's Exhibits 49-A to 49-MM were delivered to me as Exhibit 24 of the Foreman's Association of America, offered and admitted in evidence in the proceedings before the National War Labor Board. And, as I recall, the transcript of the testimony in that case will also show the offering of these exhibits by Mr. Keys.

1811 Trial Examiner Jaffee: Anything further?

Mr. Dahling: I have nothing further.

Mr. Donovan: Mr. Trial Examiner, I would like to make a statement to the Trial Examiner who I regard is sitting in a judicial capacity, and I intend my statement to be a representation to the Examiner of what I state and of the truth of what I state.

I was present in the case before the National War Labor Board Panel, Region 11, at Detroit, during the conduct of the Foreman's case, so-called, before the special Panel appointed by the War Labor Board in the cases that Mr. Dahling has referred to, to-wit, and I read from the reporter's official entitling of that cause:

> "In the Matters of Murray Corporation of America, Briggs Manufacturing Company, Chrysler Corporation, Republic Steel Corporation, Packard Motor Car Company, Bohn Aluminum and Brass Corporation, Aeronautical Products Company, Gar Wood Industries, and Foreman's Association of America, being respectively cases numbered 111-2882-D, 111-4746-D, 111-2747-D, 111-4748-D, 111-5438-D, and 111-5798-D."

I was present during the trial and during all of the sessions of that hearing as attorney for the Briggs Manufacturing Company, Aeronautical Products Company, Gar Wood Company, and Hudson Motor Car Company,
1812 and although I didn't include the name of the Hudson Motor Car Company, they were parties to that proceeding. In the same proceeding Mr. Robert H. Keys, President of the Foreman's Association of America, was likewise present during all of the sessions and except for the opening day of the hearing, which extended over a period of several months, with some interim adjournments and with the exception of the last two days at the termination, when Mr. Walter Nelson was counsel for the Foreman's Association of America was present, Mr. Keys otherwise conducted the proceeding on behalf and represented the Foreman's Association of America. He swore witnesses and introduced evidence by exhibits and he cross-examined witnesses of the several companies who were placed on the stand.

During the course of the trial Mr. Keys, on behalf of the Foreman's Association of America, and he being the then president of the Foreman's Association of America, offered in evidence the radial addresses made by him over station CKLW in the Detroit area, being the radio addresses which have been marked for identification as Company's Exhibits 49-A to 49-MM, inclusive.

These radio addresses were published in pamphlet form, one pamphlet for each address and were entitled, as printed, and they were all printed:

1813 "The Foreman's Association of America. The Voice of Organized Foremen." The seal of the Foreman's Association of America appears upon the cover sheet of the pamphlet, which contains the title I have just mentioned, and also contains the indication in large type of: "First radio address," "Second radio address," et cetera, characterizing each one of the radio addresses which were made weekly.

Also on the pamphlet on the cover page are the words "First radio broadcast." And this language follows the designation on each pamphlet. And then follows the words I now speak of, "By President of Foreman's Association of America, Robert H. Keys, over Station CKLW, National Offices 515 Barlum Tower, Detroit, Michigan, Robert H. Keys, President; William Fisher, Secretary-Treasurer; Harold M. Kelly, Membership Director."

Mr. Keys, on behalf of the Foreman's Association of America, introduced and there was received into evidence by the Special War Labor Board Panel who conducted the hearing aforesaid, the pamphlet copies, printed pamphlet copies of the aforementioned radio addresses, being the now offered Company's Exhibits 49-A to 49-MM.

I was present in court when that took place, and the pamphlets which Mr. Keys offered in evidence as Exhibit 24, I believe, of the Foreman's Exhibits in that case, and I saw the pamphlets that he offered as that exhibit

1814 in that case contemporaneously with which he announced to the Panel that he was delivering copies thereof to counsel, and as counsel for the companies aforesaid, I was given by and received from Mr. Keys the printed pamphlets which are now marked as Company's Exhibits 49-A to 49-MM inclusive.

It may be unnecessary to state further that I haven't the slightest hesitation in making the direct representation to the Court that the printed pamphlets aforesaid which Mr. Dahling, as counsel for the Packard Company in the War Labor Board case, also received are the same as the pamphlets that I have received, each now described and referred to as Company's Exhibits 49-A to 49-MM.

I would be unable to see how the source of these pamphlets having thus been explained, there could be any question arise as to their authenticity by Mr. Nelson, who seems unwilling to concede what I say bears on that point.

Trial Examiner Jaffee: Is there any cross-examination of Mr. Dahling?

Mr. Nelson: No cross-examination.

Mr. Karasick: No questions.

Trial Examiner Jaffee: First, with reference to the authenticity of the offered exhibits, it may not be inappropriate for me to say that so far as the Examiner personally is concerned—I put it that way because, of
1815 course, the Board makes the ultimate findings of fact or the only findings of fact, for that matter—but as far as the Examiner personally is concerned, I should have been quite content to take Mr. Dahling's statement without having him take the stand.

Now, so far as the contents of the pamphlets are concerned and without waiving any objection previously indicated, I should like to ask whether Mr. Nelson has anything to say with reference to the offer of the designated portions of those pamphlets as compared with the entire contents of each of said pamphlets.

Mr. Nelson: I don't know. I never read it, never heard it. I don't know a thing about them. They are just as strange to me as though I didn't live in the community, because I didn't listen to the radio addresses. I have never read a line of any one of them.

Trial Examiner Jaffee: Mr. Karasick?

Mr. Karasick: I only wanted to say, Mr. Examiner, that irrespective of any question of authenticity of these pamphlets, and not having seen them and not knowing whether or not the offered portions bear any relevance to the issues in this proceeding, it would seem to me that the pamphlets are offered in their entirety if they are offered at all and not only the limited portions which the Company now offers in these documents.

1816 Trial Examiner Jaffee: Let me ask the Company, then: Does the Company object to amending its offer to include the entire pamphlets instead of the portions

marked, with the added statement that they direct the Board's particular attention to the portion marked?

Mr. Dahling: Well, Mr. Examiner, we, of course, have marked portions in the pamphlet which we desire to have in evidence. If the attorney for the Board or Mr. Nelson wants the balance in evidence, why, of course, we feel that is another matter. As a matter of fact, of course, these are statements of Mr. Keys. There are probably a lot of self-serving statements in there which might be objectionable for that reason, but as far as I am concerned, if the Board or the Examiner would feel that the entire pamphlet should be put in, I think that that is a matter that the Examiner can determine. As I understand this proceeding, it is in a large sense an administrative proceeding, and the Trial Examiner represents the Board. This isn't really an adversary proceeding for the parties, as I understand the procedure.

We are interested in just these excerpts, of course, but if the Examiner feels that it should all be in, that is quite okay with us, subject to the statement that I made as to the self-serving statements.

Trial Examiner Jaffee: How have you indicated in
1817 the pamphlets the portions that you refer to?

Mr. Dahling: They are indicated by pencil underlining or bracketing the paragraphs and parts of paragraphs that we specifically direct to the attention of the Board.

Trial Examiner Jaffee: All right. Now, I should like to ask Mr. Nelson on the record where Mr. Keys is at the present time.

Mr. Nelson: I don't know.

Trial Examiner Jaffee: Do you know whether he is in the city?

Mr. Nelson: I don't even know that. And I want to interpose on the record, of course, an objection to a partial or piecemeal offer which is really objectionable on the grounds additional to those I have already urged. I don't know where Mr. Keys is. I haven't inquired this morning. I suppose I could go to the telephone and try to find out where he is.

Trial Examiner Jaffee: Well, I may say preliminarily—

Mr. Nelson: He was advised, of course, that there would be nothing further offered this morning and that he would be at liberty to do whatever he pleased after the close of the hearing yesterday evening.

Trial Examiner Jaffee: I may say to begin with that if the offered exhibits are received at all, I am inclined to receive into evidence the entire pamphlets—the
1818 entire contents of the pamphlets, rather than merely excerpts therefrom. The portions which are underlined or bracketed will be considered as a request by the Company that the Board pay particular attention to such designated portions.

In addition to that, however, I think counsel for the Union should have an opportunity to look at the pamphlets and also to ascertain whether or not Mr. Keys can be obtained or if he desires to return here as a witness, I think he should have the opportunity to get him here, in case counsel for the Union wants to put in any further evidence with reference to the pamphlets in the event they are received in evidence. For that purpose I think it might be appropriate to declare a recess to enable Mr. Nelson to try to reach Mr. Keys by telephone and also to look at the pamphlets.

I am open to any suggestion as to the length of the recess.

Mr. Nelson: I don't know anything about these pamphlets. My statement about not listening to it isn't meant to form the basis for any idea that I avoided listening to him. They happened to be made at a time when I couldn't have listened on the radio, even if I had that habit, which I don't have. I don't listen to a radio once a month, and then only briefly.

Trial Examiner Jaffee: I won't hold that against
1819 you, Mr. Nelson.

Mr. Nelson: I just don't want to be considered as curious on the record. I just don't like advertisements in that form and I indulge such few moments of leisure as I have in something besides listening to the radio, and I didn't hear any of Mr. Keys' addresses. I have not had any of them delivered to me and I don't know the contents.

That is a pad of papers over an inch thick and is offered at a time when I think it is unfair and improper to receive them. But Mr. Keys might be called. I don't know, but the most I could do would be to submit this to Mr. Keys as to what he wants to do about his radio addresses. That is the most I could do and that is all, frankly, I would be disposed to do. I don't know anything about what is in those addresses and I couldn't read them today. If I did nothing but read them it would take more than a day to do that.

Trial Examiner Jaffee: I will declare a ten-minute recess. If during that time a request is made to continue the recess, I can pass upon that if that request is made.

(Recess had.)

Trial Examiner Jaffee: Back on the record.

I am cutting the recess short to dispose of one matter which is not related to Company's Exhibits 49-A through MM, and that has to do with reference to the
1820 matter of errata, concerning which some reference was made at the end of yesterday's hearing.

In accordance with the remarks then made by the Examiner, counsel have checked the list of errata submitted by the Examiner and the Examiner, in turn, checked other lists submitted by one or more counsel. All parties have now agreed on the list which I have before me and it is my intention or my suggestion that the list be received as an exhibit as a list of changes which should be made in the record to correct these errors of a stenographic nature.

I would venture to assert for the protection of the reporter that here and there we have, one or more of us, taken the opportunity to correct a little bad grammar, and in none of such cases have we made any change of substance, and I suppose it is our respective vanities and prides which have been involved.

Since none of us have objected to such proposed changes, I suppose no harm is done, and I make this last observation only so the reporter won't feel unduly hurt in the matter.

So far as this list is concerned, I did say to counsel off the record that the record should show, of course, that

there may be other errors in the record which counsel may or would want corrected, and the receipt into evidence of this list will be considered as without prejudice
1821 to the rights of any of the parties hereafter at an appropriate time and in an appropriate way to suggest such further corrections, and if such suggestions are made the Board, I presume, can pass upon them at that time.

I would suggest that this list be received as the next Board exhibit, perhaps.

Mr. Karasick: I believe that would be No. 22.

Trial Examiner Jaffee: It is, accordingly, received in evidence as Board's Exhibit 22.

Have I stated the matter with reference to errata accurately, gentlemen?

Mr. Dahling: So far as the Company.

Mr. Nelson: On the part of the Petitioner the answer is yes.

Trial Examiner Jaffee: All right.

Mr. Karasick: Yes.

(The document heretofore referred to was marked Board's Exhibit No. 22 for identification and received in evidence.)

Trial Examiner Jaffee: We will have a recess.

(Recess taken.)

Trial Examiner Jaffee: On the record.

At this moment, gentlemen, having disposed of the matter of the errata, we will continue with the recess which was interrupted to permit the last discussion.

1822 (Recess taken.)

Trial Examiner Jaffee: On the record, gentlemen.

I am wondering, Mr. Nelson, whether or not you have anything to report with reference to Mr. Keys, et cetera.

Mr. Nelson: Mr. Examiner, Mr. Keys is in the city. He is busy. But I don't think, or I think after talking to him that nothing would be gained by reopening or offering testimony with respect to these radio broadcasts. I think we all know that on the radio there is a type of censorship, that is, you have to say what you think within the limita-

tions of what the Radio Company will let you say. Within those limitations and from the viewpoint of the speaker at the time, events being as they were, we believe the radio broadcasts are a true statement. Also his testimony here is a true statement under oath.

I think what the Examiner wants to know is whether we care to produce Mr. Keys as a witness following the offer of these, and the answer to that is in the negative. We do not.

Trial Examiner Jaffee: Very well. Company's Exhibits 49-A through 49-MM are received in evidence, and that applies to the entire contents of the particular pamphlets and not merely the designated portions thereof referred to by counsel for the Company.

I assume the Board will consider the designated
1823 portions as portions to which counsel for the Company directs the Board's particular attention to.

(The documents heretofore marked Board's Exhibits Nos. 49-A through 49-MM for identification were received in evidence.)

Mr. Dahling: Mr. Examiner, we are not, of course, offering in evidence anything further than the parts of the various speeches which are designated in pencil, and I wouldn't want the record to show that we have made the offer of the entire pamphlet or the pamphlets.

Trial Examiner Jaffee: Yes.

Mr. Dahling: We are only offering the part that is marked. If counsel for the Board desires to offer the other parts in, of course, our objection must necessarily be that there are self-serving declarations there which we could not admit. I simply want to get the position of the Company clear on the record.

Trial Examiner Jaffee: Yes. I would assume, Mr. Dahling, that what you have in mind is that so far as the material in the pamphlets which you haven't offered is concerned, that you do not think that the Company should be bound by the material you haven't offered. That raises the practical question as to how the rest of the material would come in. I would just not like to see a situation whereby the Company offers one portion, the Union offers

another, the Board perhaps offers still another, and
1824 so on. So I say, and I think it is your position, that in receiving them all I do is recognize that the Company has offered only the designated portions, and while the entire pamphlets will bear the designation "Company's Exhibit" to the extent that that applies to the portions of the exhibits beyond the designated portion, that is done merely as a matter of convenience only.

Mr. Nelson: Mr. Examiner, in view of the offer and explanation just made by Mr. Dahling, I move that the testimony of Mr. Dahling and Company's Exhibits 49-A through 49-MM, both inclusive, be stricken because he may say fragmentary and partial offer, and I insist that having made this offer, he is bound by the documents that he offered. He can't say now, and I want my position to be distinctly understood—he can't say "I offer deleted extracts from these talks." That is one thing. Then he can't elect to have them in at the expense of having the whole talk in, in each case, which I think is the law.

Now, he has got to either eat his cake or have it, whichever one he wants to do, but in order to make my position clear on the record, I move that the testimony and the exhibits be stricken.

Trial Examiner Jaffee: The motion of counsel for the Union is denied.

In that connection I wish to make this observation,
1825 however, I do not feel that the theory which I should suspect is used in some courts, that one party or another is bound because a particular exhibit bears that particular party's designation or even the fact that a particular witness happens to be put on by a particular party—I do not feel necessarily that that party is in all respects bound by that witness' testimony. I appreciate the fact that common law rules of evidence, as they are interpreted in many states, would tend to support at least in some respects, what Mr. Nelson has said. However, I do not believe that is the rule which is followed in, for instance, the code of evidence of the American Law Institute. I rather suspect, although I haven't checked it, that Wigmore does not approve of such a rule as is indicated in Mr. Nelson's remarks. In short, I would antici-

pate that the Board would consider the cake, frosting, and all, no matter who baked it. So the ruling stands as made.

Mr. Dahling: Now, Mr. Examiner, in the pamphlet designated Company's Exhibit 49-AA, Mr. Keys in his radio address deals with a hearing that was had before the National Labor Relations Board in the Soss Manufacturing Company, and Foreman's Association of America matter, apparently case No. 7C-1148, and the Republic Steel 98-inch strip mill and Foreman's Association of America matter, case No. 8-C-1569.

1826 The radio address as appears in the pamphlet, Company's Exhibit 49-AA, name the men who appeared at that proceeding representing the companies, including Mr. Smethhurst, who spoke for the National Association of Manufacturers, Mr. Meder, Nicholas Kelley, as general counsel for Chrysler, and others.

Mr. Keys in his radio address had the following to say: "Translate the testimony of the authorized spokesmen" —referring to these gentlemen who appeared for the companies, and others—"who appeared for the management at this hearing. Translate into actual practice in any plant and you find that the employers are insisting that they have the right to say to any foreman in their employ: 'You are working for us and you will do just what we tell you or else,' or 'You are fired and it is none of your business why,'" and so forth. I will not continue reading from the pamphlet.

I have in front of me the official report of the proceedings before the War Labor Board in the cases mentioned, and as part of these official proceedings—

Mr. Karasick: You mean National Labor Relations Board?

Mr. Dahling: The National Labor Relations Board, I am sorry.

1827 In this transcript appears the statements of Mr. Thomas F. Patton, Mr. Albert E. Meder—that is M-e-d-e-r, but in the transcript the spelling is M-e-d-d-e-r—Mr. Nicholas Kelley, Mr. E. R. Burke, Mr. William A. Crevling, Mr. R. S. Smethhurst, Mr. John C. Gall, who I believe are the gentlemen referred to in the radio address as being the representatives of management.

I would like to have considered in evidence that part of the official transcript which I have just described, or official report which I have just described, containing the statements made by the gentlemen whose names I have just listed, the statements made at that hearing and being a part of this official report.

Trial Examiner Jaffee: Is there objection?

Mr. Nelson: Well, there certainly is.

Trial Examiner Jaffee: Objection sustained.

Mr. Dahling: May this be considered on the excepted record or whatever they call that?

Trial Examiner Jaffee: Well, you mean as a—

Mr. Nelson: Rejected, Mr. Dahling.

Mr. Dahling: Rejected, yes.

Mr. Nelson: Not accepted.

Trial Examiner Jaffee: Since it is part of the Board records in any event, I assume it would be unnecessary physically to incorporate the document, and it will
1828 be considered rejected and for that limited purpose may be referred to by the Board by reference.

Mr. Karasick: Might I suggest, Mr. Examiner, Mr. Dahling has offered the transcript in question only in part and that even though the offer has been rejected you might indicate with particularity the pages of the transcript that he is offering?

Trial Examiner Jaffee: Well, I anticipate that Mr. Dahling was looking at the index of the witnesses and is apparently referring to the material covered by that index as to such persons. By the way, are those witnesses or—

Mr. Dahling: No, these are statements that are made before the National Labor Relations Board by these gentlemen.

Trial Examiner Jaffee: On what date?

Mr. Dahling: Who were invited to attend this particular meeting. The transcript bears the date of February 15, 1944. It is really an oral argument before the Board.

Trial Examiner Jaffee: I am in general familiar with the situation. They are oral arguments and those gentlemen and many others were invited to appear by the Board to assist the Board in connection with the disposi-

tion of an appeal, as I recall it, from the refusal of the Regional Director of this Region to issue a complaint
1829 in connection with charges filed involving the Soss Manufacturing Company and the Republic Steel Company.

Mr. Nelson: I was invited even, Mr. Dahling.

Trial Examiner Jaffee: As a matter of fact, I think you spoke.

Mr. Nelson: No, not at that. I was busy trying a case in Judge Moinet's Court at the time.

Trial Examiner Jaffee: I think you spoke in connection with some other case.

Mr. Nelson: I spoke in connection with the Murray Ecorse matter when it was still unaffiliated.

Trial Examiner Jaffee: Is there any further evidence which any party desires to offer?

Mr. Karasick: Nothing further on behalf of the Board.

Trial Examiner Jaffee: Anything from the Petitioner?

Mr. Donovan: I have one more—pardon me.

Trial Examiner Jaffee: Is there anything the Petitioner desires to offer at this time?

Mr. Nelson: Nothing further.

Trial Examiner Jaffee: The Company?

Mr. Donovan: Mr. Trial Examiner, I desire to offer on the record a paragraph from the brief of the Foreman's Association of America that was filed with the War Labor Board Panel and a copy of which was served on me as counsel for four of the companies involved in that hearing.

1830 I have shown the brief to Mr. Nelson whome I believe says that it is a copy of the Foreman's brief that was filed with the War Labor Board Panel.

Am I right about that?

Mr. Nelson: I believe that is a copy of my brief.

Mr. Donovan: It is signed "Foreman's Association of America, by Robert H. Keys, President," and bears the name "Walter M. Nelson, Attorney for Foreman's Association of America, 1438 Dime Bank Building, Detroit 26, Michigan."

I desire to read into the record the statement contained in that brief, as follows:—

Mr. Nelson: I object to that.

Mr. Donovan: —on page 10. Why don't you let me finish my offer and then make your objection?

Trial Examiner Jaffee: Is it a short paragraph?

Mr. Donovan: Three sentences.

Trial Examiner Jaffee: All right.

Mr. Donovan: "The Association did not present specific cases of grievances with the idea of asking the Panel to pass upon their merits. Each case in each grievance was presented as establishing the fact foremen have grievances and as illustrating their nature. Whether the specific grievance was meritorious was only of secondary importance. The important fact was the existence of the grievance."

1831 That is the paragraph which I desire in the record. The Company desires to make such legitimate argument by inference of admission or otherwise as may be proper and appropriate from that statement which was a statement in the brief of the Foreman's Association of America with the War Labor Board Panel and a copy of which was served on me and which I have in my hand as one of counsel.

Trial Examiner Jaffee: On the offer as made and on the state of the hearing as it exists, the objection is sustained.

Mr. Donovan: I request then that this offered bit of evidence be forwarded to the Board on what I believe the Trial Examiner refers to as the rejected—what do you call that?

Trial Examiner Jaffee: Rejected exhibit?

Mr. Donovan: As a rejected exhibit, if necessary. I think it should be before the Board.

Trial Examiner Jaffee: I suggest it is unnecessary to do that because of the fact that you have only offered a portion and you have read that portion into the record, so it is in the transcript in any event.

Mr. Donovan: I assume, then, we have an exception to the ruling of the Trial Examiner on that?

Trial Examiner Jaffee: You surely have.

Anything else from the Company?

1832 Mr. Donovan: I beg your pardon?

Trial Examiner Jaffee: Anything else from the Company?

Mr. Dahling: Nothing further now, Mr. Examiner.

Trial Examiner Jaffee: I gather, then, that all parties have concluded presentation of their evidence?

Mr. Nelson: May I make just a concluding statement on behalf of the Petitioner?

Trial Examiner Jaffee: Let me ask one or two things first.

Mr. Nelson: Yes.

Trial Examiner Jaffee: Do any of the parties care to make oral argument before the Examiner?

Mr. Karasick: The Board does not.

Mr. Nelson: The Petitioner does not, unless the Examiner requires or requests it.

Trial Examiner Jaffee: I don't require it.

Mr. Dahling: The Company does not desire to make an oral argument, sir.

Trial Examiner Jaffee: Very well. Is there anything further anybody would like to say?

Mr. Nelson: Mr. Examiner, we have been here three weeks. I simply would like to say that we extend our appreciation to the Examiner for his fair, helpful, and impartial hearing of this matter.

1833 Trial Examiner Jaffee: Thank you, Mr. Nelson.

Anything further before the Examiner, gentlemen? I hear nothing further.

Mr. Dahling: And I would be very remiss if I didn't concur in the statement made by Mr. Nelson.

Trial Examiner Jaffee: Well, I want to thank you gentlemen, although I am somewhat embarrassed by those remarks. Had I known what you were about to say I would have gone off the record, but it is in.

I gather there is nothing further. The hearing is closed.

(Whereupon, at 12:55 P. M., Thursday, January 4, 1945, the hearing in the above-entitled matter was closed.)

TRANSCRIPT OF ORAL ARGUMENT.

Case No. 7-R-1884.

1* THE UNITED STATES OF AMERICA

Before the

NATIONAL LABOR RELATIONS BOARD

PACKARD MOTOR CAR COMPANY, DETROIT, MICH.	Case No. 7-R-1884.
and	
FOREMEN'S ASSOCIATION OF AMERICA (Ind).	

Rochambeau Building,
Connecticut Ave. N. W.
Washington, D. C.
February 27, 1945

The above-entitled matter came on for oral argument pursuant to notice at 10:30 a. m.

Before:

Dr. Harry A. Millis, Chairman,
Mr. Gerald Reilly, Member,
Mr. John B. Houston, Member.

Appearances:

Walter M. Nelson, 1438 Dime Building, Detroit, Mich., appearing on behalf of Foremen's Association of America.

L. F. Dahling, 1400 Buhl Bldg., Detroit, Mich., appearing on behalf of Packard Motor Car Company.

Robert E. Keys, 515 Barlum Building, Detroit, Mich., appearing on behalf of Foremen's Association of America.

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* Inset numbers appearing at outer edge of text indicate page numbers of original transcript of oral argument.

Appearances

Percy Donovan, Ford Bldg., Detroit, Mich., appearing on behalf of Packard Motor Car Company.

Herbert S. Thatcher, 815 15th St. N. W., Washington, D. C., appearing on behalf of the A. F. L. Union.

Frank Donner, 718 Jackson Place, Washington, D. C., appearing on behalf of the C. I. O.

Don Mahon, appearing on behalf of the Confederated Unions of America.

B. D. Kunkle, Vice President, General Motors, 3044 W. Grand Blvd., Detroit, Michigan.

Harry P. Jeffery, 514 Harris Bldg., Dayton, Ohio, appearing on behalf of National Association of Foremen.

Victor W. Klein, 1881 National Bank Bldg., Detroit, Michigan.

T. B. Iserman, of Rathbone, Perry, Kelley & Drye, appearing for Herman Weckler, Vice President of General Motors, 70 Broadway, New York, N. Y.

B. C. Gould, Vice President, Murray Corporation, 700 Russell St., Detroit, Michigan.

S. D. Den Uyl, 1400 Lafayette Bldg., Detroit, Michigan, appearing on behalf of Bohn Aluminum Company.

R. S. Smethurst, Investment Bldg., Washington, D. C., appearing on behalf of National Association of Manufacturers.

M. J. Kane, Director of Industrial Relations for the Company, 14 W. 49th Street, New York, N. Y.

Neil Moore, Vice Pres., Sealed Power Corporation, Muskegon, Michigan.

Wm. A. Creveling, Chamber of Commerce of the United States, Washington, D. C.

Wm. J. Harnisch, Mack Manufacturing Company, Investment Bldg., Washington, D. C.

Albert E. Meder, Beaumont, Smith & Harris, National Bank Bldg., Detroit, Michigan (or Ford Bldg. Detroit).

4 PROCEEDINGS.

The Chairman: The Board will now hear the Packard Motor Car Company case, No. 7-R-1884. You have been informed that each speaker will be allowed thirty minutes over all. He may reserve a part of the thirty minutes for reply if he wishes to do so.

This morning we will have argument on the Packard case. We will have a second hearing of the interested parties insofar as time will permit. We will set aside two hours for that and one for the Employer's side and one for the Union's side.

And before 2:30 I wish that you would get together and decide on the disposal of that time and give us a list of the speakers with the allotments of time for each, the total being an hour on each side.

(Discussion off the record.)

ORAL ARGUMENT OF MR. WALTER M. NELSON.

Mr. Nelson: It is my purpose, Gentlemen, to reserve a short period of time for rebuttal, and I had in mind, of course, addressing myself first to the sole new issue raised in the brief of the Packard Motor Car Company which I take to be their claim that the rules in the Soss Manufacturing and the Republic Steel cases should be reversed and set aside.

5 Now, of course, that is a rule to the effect that the unfair labor practice portion of the Act applies to employes in a supervisory capacity.

The reasons assigned in the brief amount to an attempt to raise a doubt as to the meaning of the word "employe" as used by the Congress in the Act. I submit briefly on that that the utmost that can be claimed for the Packard Company's brief in that respect is that it may be looked at in one way doubtful what the word "employe" means in so far as the actual use of the word itself is concerned. In other words, they argue that the use of the words "worker" and the use of the word "labor" casts some doubt on whether the term "employe" should have been applied to supervisory employment.

Well now, if you take all they say about that, I think

at full face value you will arrive at the conclusion that maybe the Congress did not fully define it. But I think you would have to come to the conclusion that the Congress deliberately intended not to fully define it, that the Congress intended to leave the term "employe" elastic and expansible to meet the needs of the country as set forth in the general purposes of the Act, and so it would seem to me that the controlling limits of the meaning of the word "employe" would be found in the general purposes of the Act and not in the use of the term itself or not in any attempted definition by inference from
6 other words used in the Act. And as we would look at it of course, the Board having as we think, correctly decided the Soss and the Republic cases, it would not help matters now to say that one portion of the Act treats employes in a supervisory capacity as entitled to its benefits and another portion of the Act, namely the representation portion, treats them as not entitled. To the extent that they argue that that would be an illogical conclusion more or less we would join them but they invite the Board to make two mistakes and we think the Board has only made one so far and it is to the correction of that one to which we address ourselves. And so we would say that the attempt to construe the Act to exclude supervisory employes because the words "worker" and "laborer" are used and were used in the debates would be to bring about the evils intended to be cured by the Act by ignoring the controlling phraseology of the Act as applicable to the word "employe."

Now, the employer in this particular case,—and of course, it doesn't hurt to say like in the other similar case—comes in here and we say to the Board that we want to represent supervisory employes for the purpose of dealing with respect to their wages, hours and working conditions, whereupon the defense to that request is made that our duties and responsibilities are this and that and the other, and a great deal of time is spent on what are
7 the duties and responsibilities of foremen.

Well, logically speaking, what has that to do with whether these employes may properly petition for the benefits of this Act on its representation side? After all,—

The Chairman: How do you use the word "foreman"?

You just used it. And you have different grades of supervisors—

Mr. Nelson: Well, when you get around to it it is supervision, telling other people what to do.

The Chairman: But you also have top supervision. You have to draw a line somewhere. Now, what is it specifically that you are petitioning for? Do you want to include general foremen, foremen, assistant foremen,—

Mr. Nelson: Special assignment men,—that's four grades in this particular case.

The Chairman: You want general foremen included?

Mr. Nelson: General foremen, foremen, assistant foremen and special assignment men, that is right. And we in great detail showed, I think, in the record that those men are engaged solely in a supervisory capacity. And on the one hand they do no physical work. On the other hand they have nothing to do with policy-making and they are not in the management of the company in any sense excepting as representatives carrying out orders determined by other parties said to be higher than they are in the hierarchy.

8 The Chairman: Well, are there supervisory obligations of general foremen, assistant foremen—

Mr. Nelson: In principle they are the same. In detail and in fact they differ. That is to say, one has authority over the other. The assistant foreman is directed by the foreman. The foreman is directed by the general foreman, but the thing he is directed to do none of them have any part in determining. He just carries out what he is told to do.

Mr. Houston: Do any of these foremen have a right to hire or fire?

Mr. Nelson: No, none of them.

Mr. Reilly: What are their powers with respect to recommending—

Mr. Nelson: They have the power to recommend.

The Chairman: And that is true all up and down the line?

Mr. Nelson: All up and down the line. Even as a matter of fact I think it is a fair inference from the record that the maintenance and production workers would have

a right to recommend that the man next to him be fired. Now, what attention would be paid to it would, of course, depend upon circumstances and the merits. But that is likewise true of the foreman's recommendation.

Mr. Houston: Now, who is the active force of the company giving out each year's stock?

Mr. Nelson: They do not extend to any of these.

9 Just where they stop we don't know.

The Chairman: They are not general foremen?

Mr. Nelson: They do not include the general foremen on this record. And whether they include division managers or superintendents we don't really know except from hearsay and we made no attempt to show that in the record because we were not interested in making any claims in their behalf.

Mr. Houston: Are some of the general foremen in some ways equal to the authority of superintendents in other plants?

Mr. Nelson: Well, I would have to answer that, I think, in the affirmative. And that is to say, you can't take the term "general foreman" as an absolute and probably you would have to look into the authority in the given plant to determine just what level of supervision that particular term had been applied to. Generally speaking, the general foreman is a foreman within the terms that I have described and we would claim the right to represent him within those limits, generally speaking, but there might be exceptions. For instance, there are places where the term "general foreman" ranks higher than superintendent. I think you will find that they would be rare but I think you can find, could find such plants. Generally a general foreman is a man who does not participate in management in the determination of the policies or the purposes of the company. He is a man to whom orders are given

10 and which he is supposed to carry out through subordinate supervisors.

Mr. Houston: I remember you did give twelve foremen in the Packard case.

Mr. Nelson: We did, and we included some others—some 89 others.

The Chairman: On what basis was that done?

Mr. Nelson: On the request of the company. Now, that is really the situation. They set these twelve men they wanted left out of a consent election. We agreed to it because they asked us to.

The Chairman: They gave you a reason for it, did they not?

Mr. Nelson: Yes, they did. They had more than one department under their supervision. They gave that as a reason.

Now, without conceding that that was a valid reason you could understand that a consent election arrived at in a friendly way was a matter on which we should give and take on the request of the company without any valid reason as we claim because the supervision of more than one department didn't involve anything but supervision, but there was no reason at that time with a one hundred percent organization lacking, I think, two or three foremen in a total of some 8 or 900; there was no reason for us to be arbitrary about it. It was experimental. We
11 conceded those twelve men and they were satisfied with it early in the negotiations.

Now, of course, when you come to a contested matter then we would have a different attitude in respect to those twelve men. But our attitude was not a combative or adversary one. We were sitting at the table agreeing on it and we agreed on something that on principle I don't think could be defended.

Mr. Houston: Did these general foremen have anything to do with the formation of the policy of the company?

Mr. Nelson: None whatever as the record shows.

Now, it does show, to be fair to the other side,—they will argue it doubtlessly for themselves,—it does show that occasionally a man is called in to conference to find out what the capacity of his machines is, what the nature of his man is, and to get first-hand information. He is sometimes called in for conference on a new layout that is if they are laying out the floor again or the machinery. He is called in for factual conference. But he is not called in to determine whether that floor will be arranged, what kind of machines are to be put there. He is just called in for factual information. That happens some times.

The Chairman: Does that include type of machine and that sort of thing too?

Mr. Nelson: I think the record is not open to the
12 construction that it does. I think the company determines the type of machine. They might call him in to learn whether he has got men that can run that new machine or something of the kind but not the type of the machine, nothing of that kind. They might call him in to learn what his experience was with a given type of machinery but all of those matters of policy are determined by somebody higher than the general foreman.

The Chairman: Am I to infer to base everything on the determination of policy?

Mr. Nelson: Oh, not entirely.

The Chairman: Well, what else?

Mr. Nelson: I think whether the man's main—

The Chairman: I am just wondering whether or not the general foremen, foremen and assistant foremen and general assignment men and so on participate in the settlement of grievances in different ways. In different degrees.

Mr. Nelson: Oh, not really. The only point about that is it originated with the lowest rank of foreman ordinarily.

The Chairman: Yes.

Mr. Nelson: He makes a report or recommendation. It passes immediately to his next higher supervisor and it passes beyond—

The Chairman: Who has the authority to approve or
13 disapprove?

Mr. Nelson: Somebody above the general foreman. We don't know exactly who,—the superintendent ordinarily.

The Chairman: You say it starts with the lowest foreman in charge and then from him to the next foreman and he just handles the thing but has no authority to approve or disapprove?

Mr. Nelson: Except in small matters. In any matter of any moment nothing can be done that binds the company until it reaches somebody above the general foreman.

The Chairman: Well, further approval or disapproval is necessary?

Mr. Nelson: That is right.

The Chairman: Would you say that these people function in the same way in settling grievances? Any type you want to?

Mr. Nelson: Yes, generally speaking, that's true.

The Chairman: Well, now, specially speaking?

Mr. Nelson: Coming to a particular matter the record here shows that there are certain rules. There is an agreement with the Maintenance & Production Workers Union that to some extent fixes the disciplinary power of all foremen. Then there are certain rules of the company that further restrict them. Within the limits of those rules a foreman may act. For instance, he may send a man home if he is drunk and send him home and he has to stay
14 home. Then if he penalizes him say, up to two or three days, for having come to work drunk, because that is in the rule in the agreement he makes that stick, but the moment you get beyond that, a demand for a pair of gloves or a request for a hammer or something very small, then it has to go in any except those stereotyped and agreed cases it has to go to somebody above the grade of general foreman before discipline can be made to stick.

The Chairman: You mean to say, do you, that discipline is standardized and all supervisory people are under the same company rules with reference to what they are to do in specific cases?

Mr. Nelson: I think that is the correct statement of it on this record within the limit of the company rules and the agreement with the Maintenance & Production Workers' Union. Then, of course, you do have—

The Chairman: Well, what would be the theory then of a piece of paper going from the assistant foreman to the foreman and to the general foreman?

Mr. Nelson: One reason is information. In other words, each of those steps is entitled to the information that this particular incident has arisen.

The Chairman: Do they have slips?

Mr. Nelson: They have report forms and they are in evidence in this case.

The Chairman: And do they have blanks saying
15 that they have approved or disapproved or anything of that kind?

Mr. Nelson: Recommendation instead of approval. And it was agreed. The word "recommendation" was used.

The Chairman: Then the word "recommendation" would imply counter-recommendations?

Mr. Nelson: That's right. And the next man along might not agree.

The Chairman: He might not agree to that one recommendation but he might make a different recommendation.

Mr. Nelson: He might. I'll concede that generally that doesn't happen, but it could. Probably he could say: "I don't think that recommendation is good," but there wasn't any evidence of any incident of that kind in this case.

The Chairman: What does the company do, then? Do they treat these two statements as equal or does it take the higher recommendation of the man above?

Mr. Nelson: Well, we would have to answer that that no such situation was shown and I don't know what the company would do. I only answer for one purpose on principle that I assume from the proof in the case that it was a fair inference that an assistant foreman might recommend affirmative action. The foreman might recommend negative action. The general foreman might agree with the assistant foreman. That might happen. But no matter what they recommend at all that would happen would
be that the card with their recommendation
16 would finally land in the superintendent's office before anybody could do anything.

Mr. Houston: In other words, a foreman could not discharge a subordinate foreman. He makes a recommendation which would finally go up to the personnel office or the superintendent's office?

Mr. Nelson: There is no question of that on this record. There is no foreman has any power to discharge or discipline another foreman without action above the general foreman, and pretty well above him.

The Chairman: They could where a man gets drunk?

Mr. Nelson: Well, that's a maintenance and production worker again, you see, I am referring to.

The Chairman: I know.

Mr. Nelson: But it would be a foreman.

The Chairman: But grievances come from there. They are not grievances of assistant foremen as against foremen ordinarily.

Mr. Nelson: They might be.

The Chairman: They go to the rank and file.

Mr. Nelson: That's right.

The Chairman: To be handled?

Mr. Nelson: That's right. Generally speaking the grievance is one relating to maintenance and production workers.

17 The Chairman: Now, the assistant foreman,—we will say you are off for three days or six days, drunk; does he exercise independent authority or does he apply a company-made standard in disciplining a man who got drunk—

Mr. Nelson: Now, if you are applying that to subordinate supervision my answer would be—

The Chairman: I am talking about—

Mr. Nelson: Maintenance and production worker.

The Chairman: —what is done about production and maintenance workers?

Mr. Nelson: In that event, if the rule was explicit it could be applied by the foreman in question. If there is any question about the application of the rule or the agreement with the Maintenance & Production Workers Union then it has to go at least as high as the superintendent which takes it above the general foreman in this case, before anybody can take any action.

The Chairman: That is, they have an explicit rule?

Mr. Nelson: That is right.

The Chairman: Then it has to go up for consideration higher up?

Mr. Nelson: That is right.

I think perhaps, if there are no further questions, I have taken as much of my time as I should take at this time.

Mr. Reilly: Mr. Nelson, are these employes in these categories hourly paid or salaried?

Mr. Nelson: Are you speaking of supervisors?

Mr. Reilly: No. I am speaking of the four categories that are in your proposed bargaining unit. Are they made up entirely of salaried people or are some of them hourly paid?

Mr. Nelson: Some are hourly rated. I think it is fair to say that largely they are salaried, but there are hourly rated employes in these four categories.

Mr. Reilly: Your position doesn't distinguish between them on that ground?

Mr. Nelson: Not at all, and we don't think that is a valid distinction. And, by the way, the company pays no attention to that distinction in its handling or in training of these men. I think they said, in effect, in the record that where there were hourly rated employes it was just something nobody had given any attention to.

Mr. Reilly: The record doesn't indicate then that they were having different classifications for the purposes of the Wage & Hour Act?

Mr. Nelson: I think the answer to that is correctly "no" on this record. And as a matter of fact neither side treated the manner of payment whether by salary or hourly rated as anything but a matter of convenience as between them and the company and we treated it as not going to the root of any material portion of the issues presented here.

Mr. Reilly: Well, was there any separate contention made with respect to the different levels of supervisors here?

Mr. Nelson: As to whether they were suitable as a bargaining unit?

Mr. Reilly: As a single bargaining unit.

Mr. Nelson: Of course, I don't want to assume to answer too much for my brothers here; so far as we are concerned we are firmly planted on the proposition that it would be a mistake that both the association and the employer would rue beginning the first day we tried to do it and going as long as we tried it, to try to make a differentiation on these four various levels.

Mr. Houston: You mean that you would have to have four charters?

Mr. Nelson: We would have to have four separate organizations. You would have to have four sets of grievance machinery. You would have to have those grievances machines integrated to each other and you would have just a lot of technical work that would be red tape that we would be struggling with and have more trouble with than we could readily foresee a solution.

Mr. Houston: Isn't that what happened at Ford's, one unit?

Mr. Nelson: We have six classifications.

Mr. Houston: (inaudible)

Mr. Nelson: Perfectly, it would be a mistake there. We have six classifications in the Ford contract, besides which we have the marine license personnel including mates and engineers and that at least gives us seven, you see, and no trouble at all. We got that as a result of negotiation and experience.

Mr. Houston: All one unit?

Mr. Nelson: All one unit. Mr. Keys reminds me now, there are nine, nine separate classifications working harmoniously under the Ford contract. And by "harmoniously" I mean that we are having no difficulty as among those classes or levels of supervision in one chapter of the association, in one unit. And that is our experience and our experience there leads us to look with a good deal of dread upon being forced at this stage of experience into experimentation with trying to do this on various levels.

Mr. Houston: Wouldn't that put a lot of work on this Board to try to police which level they should be in?

Mr. Nelson: Well, if the Board wishes it onto itself I shan't cry at this stage for the Board but because nobody else can get us to do it except this Board, of course we will yield to the Board's order on that, but I would urge very strongly on the Board that our experience in the field would be against slicing these levels of supervision in a horizontal way. We would have, I am satisfied, a dismaying lot of trouble trying to work that out fairly both to the company and ourselves.

Mr. Houston: But on the other hand, wouldn't it police

itself when put into one unit and if anybody attempted to join your organization too high up for management you would challenge the vote. On the other hand the company would challenge the vote if there were slowdowns.

Mr. Nelson: I suppose the company might challenge it both ways, and at the present stage of experience we very advisedly asked for this particular bargaining unit consisting of these four levels. We believe it is a workable block and that each level resembles the other in its power and authority and that is the determining thing. We would like to bring the Board to that view, but it is the power and authority that the foreman possesses that determines his characteristics and his method of functioning. These four levels are identical in that except that one is above the other. That's one reason we selected them.

Mr. Houston: Is Mr. Keys going to talk in this case?

Mr. Nelson: If you would like.

Mr. Houston: Well, no. I just want to know. I want to ask you one more question.

22 Mr. Nelson: Do you want to ask him the questions?

Mr. Houston: Yes.

Mr. Nelson: Very well.

(Mr. Keys intervenes at this point for a time.)

ARGUMENT OF MR. ROBERT H. KEYS.

Mr. Houston: What has been the experience of the demotion of foremen of the Ford plant where you have a contract and what has been the experience outside the Ford contract?

Mr. Keys: Well, Mr. Houston, in the Ford Motor Company that where we have applied the contract I believe that conservatively speaking there have been well over 2500 demotions since the contract was signed.

The Chairman: Of supervisory—

Mr. Keys: Of supervisory employes.

Mr. Houston: In the Ford plant?

Mr. Keys: In the Ford plants due to cutbacks in production. Our record shows that 98 percent of all of the cutback demotions as well as 98 percent of all types of grievances of supervisory employes have been settled to

the mutual satisfaction of the company and the association. Two percent have not been settled to our satisfaction and are being negotiated at the present time.

Mr. Houston: Has there been a work stoppage in connection with that?

Mr. Keys: There have been no work stoppages in
23 connection with the demotions.

The Chairman: If there is no agreement is the business taken to the umpire?

Mr. Keys: We have agreed upon who shall act as umpire and we have agreed upon the terms under which he shall be paid, but we haven't submitted any of the cases to the umpire as yet.

The Chairman: There is a general umpire there, is there?

Mr. Keys: There has been a verbal agreement reached with the company as to who he shall be and as to how much we shall pay him, but the two percent of the cases that perhaps will go to the impartial umpire have not gone to him as yet because out of the two percent we feel that we can settle at least 50 percent of that two percent with a little negotiation.

The Chairman: May I ask a question or two?

Mr. Houston: Yes, go ahead.

The Chairman: Are you familiar enough with the situation to tell me how this compares with the grievances and settlement of differences of the rank and file? Of course we have an umpire and we have a number of cases. Now, do you have more or fewer grievances—

Mr. Keys: If you have an umpire.

The Chairman: Do you settle less than 98 percent
24 or more than 98 percent of cases of the rank and file?

Mr. Keys: Well, of course, Mr. Chairman, I am not familiar with their records. I can only make a guess at it.

The Chairman: Well, if you can't answer it is no harm.

Mr. Keys: Frankly, I would say that the association through its negotiations with the Ford Motor Company and in settling the 98 percent has bettered the record of the U.A.W.C.I.O. Local 600, the representative of the rank and file workers by considerable. In other words, they have a lot of grievances that are not arrived at satisfac-

torily and do go to the umpire and they have a permanent full-time umpire and I know that he is busy all the time on the grievances that are going to him.

(Discussion off the record.)

Mr. Houston: What I want to know is how is it that you had no work stoppages because of any cutbacks in the Ford plant where you have a contract? Do you know of any other circumstances outside of the Ford plant where there have been demotions or cutbacks,—what happened?

Mr. Keys: Well I would like to make it clear for the record, Mr. Houston, that on one occasion,—and I am strictly speaking of a demotion case now,—the foremen in the pressed steel building of the Ford Motor Company protested to the superintendent's office in a body. They felt that the company was violating the provisions of the
25 contract, and the company called me and I went out and had the thing settled in about an hour's time or less. They didn't leave the building. They weren't actually on strike to that extent. They simply went to the superintendent's office in a body and said: "Now, here, you are misconstruing our contract and we don't like it." And they argued back and forth until I got out there and settled it. Now, the company, I know, claims that was a strike, so I will get my bit in here first and say that we are well aware of that incident but we don't look upon it as a strike. There have been two other small incidents, one involving eleven men in which they protested the transferring of a foreman from one job to another. And the eleven men protested similarly to what I just described by walking to the superintendent's office and that might be construed as a strike but it wasn't, and the men were soon back on their jobs and as a matter of fact they were docked by the company for their action.

Mr. Houston: Those are all in the Ford plant?

Mr. Keys: Those are all in the Ford plant.

Mr. Houston: I am talking about the outside. Were there any of them?

Mr. Keys: Well, I know that, Mr. Houston, but I did not want the record to be incorrect. I wanted to tell what happened in the Ford plant so there is no misunderstanding.

Now, outside of the Ford plant in the month of May
26 last year, we had a series of strikes in the city of Detroit by supervisory employes that practically paralyzed the city.

The Chairman: Well, those things are in the record, I think.

Mr. Keys: Yes. Now, how many—

The Chairman: It isn't necessary to repeat it then.

Mr. Houston: Go ahead, I want to hear it.

Mr. Keys: How many of the men that participated in that strike participated for any given reason it would be hard for me to say. All we know is that they spontaneously walked out and shut the plant down and we had an extremely difficult time in keeping our other approximately 20,000 members in that area at that time from doing the same thing. The entire city of Detroit would have probably been paralyzed as far as war production was concerned. And we thought we were fortunate at stopping it at the point we did, and had extreme difficulty in making the men that were on strike come back to work. As a matter of fact, it took the War Labor Board order to us to come to Washington to get the thing settled. When we telephoned back to Detroit stating what had taken place before the War Labor Board the men then went back to work but they were reluctant to do so at that time.

Now, those strikes were caused as I believe by an accumulation of such demotions, transfers, grievances and
mainly and frankly the refusal of the employer to
27 do anything about them.

Mr. Houston: Now, it is my understanding that at the Curtiss-Wright plant in New Jersey,—I may be in error on the plant, that on the demotion of a foreman they put on a strike of 32,000 employes because of the demotion of one man. Do you know anything about that situation?

Mr. Keys: All I know is what I read in the newspapers. However, I do know this: the Curtiss-Wright employes formerly in that organization are now a part of the Foreman's Association of America. They have affiliated with us, and have become one of our chapters.

Mr. Houston: What I am getting at, Mr. Keys, is this: that if the foremen have a contract with some employer

and have an understanding and agreement when they are cut back and demoted there hasn't been a strike but there has been on the other side where there has been no—

Mr. Keys: Absolutely, that is a foregone conclusion. Wherever there are harmonious relations through agreement things are bound to work more smoothly.

Mr. Houston: This Act, as I understand it, was set up to end industrial strikes. Because the foremen were not striking at the moment the Act was passed to my mind doesn't foreclose them to organize if it will end industrial strife among the foremen.

Mr. Keys: That is right.

28 And the language of the Act is broad enough to take care of these situations as they arise and the situation has arisen where the supervisory employes feel the need of organization and representation and they are seeking it. To deny them such representation would not be, in my mind, to effectuate the policies of the Act as intended.

Mr. Houston: And this Board has always held that the foremen are employes, and that has been supported by the courts every time it has been challenged. Is that correct?

Mr. Keys: To the best of my knowledge, yes.

ORAL ARGUMENT OF MR. L. F. DAHLING.

Mr. Dahling: The authority of this Board in the Maryland Drydock case held that foremen did not constitute an appropriate bargaining unit under the Act. In the matter of the Boeing Company, in the matter of the Murray Corporation of America, after a hearing petitions were dismissed and petitions for representation filed by foremen. The General Motors case involves the same Foremen's Association as we had in this particular proceeding. The position was there taken that the Maryland Dry Dock case would not be in point because of the fact that they had an independent union. This Board held that the factors militating against the establishment of unions of supervisory employes set forth in the decision of the Maryland Drydock case did apply. In the Soss Manufac-

turing case and the Republic Steel case this Board
29 affirmed its previous decision with respect to a unit of foremen. It did hold in those cases that foremen were employes under Section 8 of the Act.

In June of this year the War Labor Board appointed a special panel to go into the question of foremen's grievances and that report has been filed finding the foremen had no substantial grievances. The petition in this case was filed on October 20th; and we assume therefore that the same issues that were before the Board in the cases that I have cited were before the Board again. Those issues, as I see them, are first, are these foremen employes within the meaning of that word as used in the Wagner Act? Secondly, if this Board continues to so hold, are foremen an appropriate unit for collective bargaining purposes?

Now, the position of Packard is that they are not employes under this Act for any purpose and it is for that reason that we incorporated in our brief a discussion on that particular matter. Mr. Nelson has referred to that. I do not intend to go into that at this time as time will not permit but it is the position of Packard that they are not employes, that they were never intended to be placed under the Act,—they are a part of management as this Board has held. The purposes of the Act do not apply to them because it is their particular position, and can't apply to them. Otherwise we don't know where we are going to stop and we don't know where collectivism is going to stop.

30 Mr. Houston: Well, (inaudible)

Mr. Dahling: We are opposed and have at all times been opposed to the inclusion of foremen with the maintenance workers or in independent unions—

Mr. Houston: May they organize at all?

Mr. Dahling: The foremen have a right to organize. We do not deny that. They have a right to organize, but what we are opposed to is the government's stamp of approval and the order of the government requiring us to collectively bargain with our supervision and part of our management because we are convinced that it is not the

purpose of the Act and secondly that it would be detrimental not only to those foremen but to industry in the country at large. That has been the position which we have taken from the beginning.

Mr. Houston: Would it be detrimental to the foremen?

Mr. Dahling: It will be detrimental to the foremen because these principles of unionism which will apply. In this record the testimony is to the effect that the same principles of unionism will apply as applied in connection with the C. I. O. One principle of unionism, of course, is seniority. There is testimony in this case. A witness was asked about that. We believe in seniority. Well, he was asked: "Now, how does that work? Should merit be considered? Should ability be considered?" Why, yes, it should be considered. There was not any question about that. It should be considered. He was then asked: "Who is going to decide that question?" He was rather reluctant and stated that the parties should get together with the foremen and the Foremen's Association and that the matter could be determined. But he was then asked: "What would happen if these parties could not agree, and if the upper management should say that X was the man that should be promoted or demoted," and the Union said: "No, Y is the man that should be demoted." But he said: "In that case there would be danger of a strike."

The Chairman: Who asked him why?

Mr. Dahling: I am speaking of foremen, sir.

The Chairman: Why?

Mr. Dahling: Merely as a matter of designation and differentiation between the foremen that the union desires to have promoted.

The Chairman: You have an agreement with the Automobile Workers?

Mr. Dahling: Yes, sir.

The Chairman: Now, what if you have a disagreement, do they have a provision for arbitration?

Mr. Dahling: There is no provision in Packard plant for arbitration.

The Chairman: So you rest upon your honor?

Mr. Dahling: You rest upon your honor in that case.

Now, on that there are other union principles, of
32 course, which we feel cannot be applied as far as foremen are concerned. Frankly, we take the position that foremen after they leave the collective bargaining ranks, and as a matter of fact the record in this case shows that the foremen had passed and that was the conclusion of the assistant foreman and the general foreman, are all from the workers. They come up through the workers. It is our position that after they get to that point they become and must go up in competition with others and with themselves. You can't have loyalty to a union on one side and carrying out the union principle of one for all and all for one and get the loyalty to the company that you must have. There is too much pressure being brought against them to properly represent the company as such.

Mr. Houston: Where does the pressure come from?

Mr. Dahling: The pressure comes from the very fact that the leaders of the Union movement are interested in the union and are not interested particularly in the company. The pressure comes from the fact that whenever you have a union you have in that union a group, and a small group, a small minority that runs that union. You have the leaders who must be elected and they are only elected by the members if they are popular enough with the members.

The Chairman: Do you mean to include the rank and file when you make that statement?

Mr. Dahling: I am speaking now only of foreman-
ship.

33 The Chairman: I know, but you talked about a union and you say the officers run it. Now, is that true of rank and file?

Mr. Dahling: I believe it to be true of rank and file, yes, sir.

The Chairman: You mean it would apply to all organizations?

Mr. Dahling: It would apply to all organizations, all union organizations.

Mr. Houston: Does the company belong to the National Association of Manufacturers?

Mr. Dahling: I can't answer that question, sir. I don't know whether it does or not.

The Chairman: Do you deal with the Parts Association?

Mr. Dahling: That I do not know. I am not familiar with that.

The Chairman: I understand that those who manufacture parts in the automobile industry are organized into associations. I presume that is for mutual benefit.

Mr. Dahling: It is my understanding there is such an association. But getting back to this point as to these principles of unionism frankly the company has,—and I say that rather questionably, — rather accommodated itself to that as far as—it is an entirely different matter, however, and would be an entirely different matter
34 if this Board should by orders force these companies, and Packard particularly, to recognize by way of collective bargaining with a union of its supervision.

Now, I think, when you come down to it—

The Chairman: Of course, under the Act we do in a good many cases direct an election and the employer does not then deal with the union that has a majority. Complaints are issued and the courts order them to bargain. But wherein does the foreman differ from the rank and file in that respect?

Mr. Dahling: The foremen differ in this respect, as far as we are concerned,—a foreman after he leaves the ranks, as I have stated, he goes up as an individual in competition. In the automotive industry we have competition and have plenty of it. We must have the best available men. We must have the best type of supervision. We cannot be controlled in the selection of that supervision by what some union may want. We cannot be controlled by a group of union leaders who favor one man over another man. That must be our responsibility. It is not only a responsibility. It is our duty.

Mr. Houston: Well, what had the union to do with him when they took him out of the ranks?

Mr. Dahling: The union had nothing to do with it. The man came out of the ranks of his own free will, sir.

Now, he came out of the ranks—

Mr. Houston: The rank and file union did not tell
35 you what kind—

Mr. Dahling: They did not tell us to select.

Mr. Houston: There was no pressure of any kind there?

Mr. Dahling: No pressure of any kind there.

Mr. Houston: Nor any pressure here.

Mr. Dahling: Do you mean pressure on the promotion?

Mr. Houston: Yes.

Mr. Dahling: There will be pressure here as soon as these union principles begin operating, as soon as some third party—This union is in the position. This union will have as the testimony in this case discloses attempt to dictate what will be done, attempt to say who should be demoted and who should be promoted. Who should be laid off when people should be laid off.

Mr. Houston: Should the union principle apply in the first instance when you picked him out of the ranks?

Mr. Dahling: The union has nothing to say on that.

Mr. Houston: The union has plenty to say.

Mr. Dahling: But here as soon as there are demotions they will have plenty to say because that is one of their principles which they have maintained throughout this case.

(silent).

Mr. Houston: In other words, one union is started and the other is reciprocal?

Mr. Dahling: You have a different situation. You have, in industry, and in Packard two classes in management.

36 One, you have the workers, then you have management. Packard being a corporation must have its action through individuals. It must act through individuals. It must act through representatives. Now, who are these representatives of Packard?

The representatives are the people who direct the operation of the company and direct these workers. Take your managerial staff at Packard. You have a president. You have two main plants, one is used for the manufacture of the Rolls Royce engine. The other plant is used for the manufacture of marine engines. Those two plants both have managers. The managers have two or three, we will

say, assistants under them. And then you get down to your divisions, say 16 or 18 divisions. In those divisions you have division managers, assistant division managers and superintendents. You have 50 or 60 of those,—between 50 and 60. Then you have your general foremen, then your foremen and then your assistant foremen who are in charge of these departments into which the divisions are divided, and there are, we will say, approximately 300 of those departments. These foremen are the direct contact of upper management with these workers in the departments. They are in number approximately 1100. Now, based solely upon the number of people who have or could have authority, these foremen are of vital importance to upper management.

37 Mr. Houston: In carrying out the policy of upper management.

Mr. Dahling: That is the point, and important in this particular case because they are the ones who are in direct contact with the workers. They are the ones who interpret and carry out through the workers the policies of upper management. They are the ones who have the power and authority, we'll say,—we will use the word "recommend" although this case is filled with testimony that a recommendation of a foreman unless it is contested by the union under the union contract is invariably carried out, and goes through automatically. But use the word "recommend" they have the right to recommend the discharge, the removal from the rolls of these workers. They have the right to discipline these workers.

Now, of course, in any large organization you must apply discipline generally on the same basis. You can't say in one department that if a man is drunk he should be laid off for a week and in another department next door that he is only laid off for one day. There are certain rules and regulations which these foremen carry out. In a discussion with Mr. Nelson I think that the distinction between a grievance and carrying out discipline was not fully established. These foremen have a right to discipline. They have a right to recommend discharges that are car-

38 ried out. They have a right to recommend promotions and they are carried out.

There was one case in this record where one of the foremen made certain recommendations. The union objected and protested that Packard had not done right by the foreman because it was some time afterward before the recommendations of this foreman that certain of his workers should be made assistant foremen were carried out, that they were eventually carried out. The recommendations are being given great weight and they have to as a matter of necessity be given great weight. They are the only source, the only contact of upper management. These people who have those duties and responsibilities must act as individuals and their loyalty must be undivided.

We take the grievance procedure. That is set up in the contract, with the worker. Under that grievance procedure the first step is with the foreman, the steward of the union is to contact this foreman. And this record discloses that the majority of all grievances are settled at that step. In practice there isn't even any written grievance report in the first instance. Frankly, it was thought that it would be better to keep it on an informal basis and have the matter discussed between the foreman and the steward.

Now, if, however, the steward or the man involved is not satisfied with the ruling of the foreman then the steward can take it up to the next step of the grievance
39 procedure where the chief steward appears and some one from the Industrial Relations Department of the company. If again the worker is not satisfied, or if the union is not satisfied, it goes to the Plant Committee of Three, appointed by the Union and a management representative. Now, that is the ladder that the grievances follow, but in the first instance the foreman is the contact with the worker and settles the majority of those grievances. We can't afford in industry—

The Chairman: May I ask you a question there?

Mr. Dahling: Yes, sir.

The Chairman: Someone said that practically all of these things were disposed of by the management through rules. Is that true at Packard?

Mr. Dahling: Grievances, of course, may be of many different types.

The Chairman: I will just throw them all in a lump together—

Mr. Dahling: I think, Mr. Nelson had in mind matters of discipline. There are rules, not only at Packard, but at most other companies, a set of rules in connection with disciplinary matters. In other words, if a man comes in drunk, if he commits some other violation of this particular rule the penalty is so and so and is applied and that is the end of it unless this man makes a grievance
40 of it and carries it up through the grievance machinery. Now, in those cases where no rule has been adopted then it is up to the foreman to exercise his discretion in connection with that particular matter.

The Chairman: In connection with Mr. Hudson's (?) statement, I want to know in how far management laid down the rules and standards which are kept in force by the foremen and in how far there were no such rules and standards so they went on their own and made recommendations that are ordinarily accepted.

Mr. Dahling: The only rules that are laid down at Packard have to do with matters of discipline and I think there are about 14 or 15 different types of violations of company rules with the penalty which should be applied runs anywhere from one day off to a discharge. Those are the only written rules. On the other grievances matters there the foreman has to exercise his discretion in making his settlement and if he makes a settlement that is final as far as the company is concerned. The workers, however, may take it into the union grievance procedure.

The Chairman: Well, the thing I am interested in is what do these grievances amount to if these other things which call for discipline are going to become the rule. Do you have 25 cents coverage, 50 cent coverage or 75, 90, 95 or what is it?
41 Mr. Dahling: We have no figures in the record on that. The record, however, I believe, discloses that whether the grievance results from the application of the penalty for violation of the rule or results from the fact that the worker is dissatisfied for some other reason. Practically all of them are taken care of at the first step, but how far you would divide these matters of discipline,—

well, an objection might be raised about the type of work the man was doing, the way that his machine was operating and things of that character, there is nothing in the record.

The Chairman: Well, of course, we have no rules for promotion or transfer. Suppose that Tom is promoted to a more skilled job carrying higher wages and Dick thinks he should have got that promotion, what do you do there?

Mr. Dahling: Are you referring to a foreman?

The Chairman: I am referring to the man who earns his bread by the sweat of his brow, the rank and file.

Mr. Dahling: Well, if you are referring to the rank and file, of course, the contract, theoretically, he deals that matter with the company. Now, if the union thinks that that is a grievance and that should not have been taken through the course that it was, and now I have departed from the question of the ordinary provisions of the contract. They must of course be followed.

The Chairman: Yes.

42 Mr. Dahling: But if it is a matter that would not be covered by seniority provisions of the contract then the union people can take it through the grievance machinery, take it up with the foreman and so on up the line.

Now, where you get to your foremen however, the recommendation for promotion or demotion of, we will say, an assistant foreman,—and by the way, there are four types of foremen mentioned here. There are only three at Packards. The general foreman, the foreman and the assistant foreman. There are men who are called special apprentice men. They have qualifications of foremen. They are used as foremen or they are used as trouble makers, but we make no claim that they are not in the classification of foremen.

The Chairman: They substitute for the others.

Mr. Dahling: They act more or less as production workers. They overlap.

Now, if it is a case of a demotion or a transfer of a foreman the general foreman is the one who makes the recommendation and this record will disclose that those recommendations are almost invariably carried out. In other

words, the foremen, the general foremen will recommend that a foreman be transferred or be demoted. That goes to the superintendent.

The Chairman: Cases of demotion then start with the general foreman?

43 Mr. Dahling: They start with the general foreman. He has a right to recommend.

The Chairman: And nobody else?

Mr. Dahling: No one else, and if it came to a showdown I suppose someone further up the line in collaboration with the foreman could.

The Chairman: I am talking of the group of foremen at the different plants.

Mr. Dahling: The group of foremen—

The Chairman: That is the general foreman is different from the other foreman in that he has this right to recommend promotion.

Mr. Dahling: And the foreman under him has the same right with respect to the assistant foreman.

As the foreman in this case testified it has to work like an army. You have to have your petty officers and your officers and the orders have to come down the line and they have to go back up the line. The assistant foreman, unless he is in charge of the department, would merely make verbal reports to this foreman and if he happens to be in charge of the department he then can send through recommendations the same as any other foreman.

The Chairman: You have a contract with the U. A. W.?

Mr. Dahling: Yes, sir.

The Chairman: Both your foremen come from the

44 rank and file? Does that contract say anything at all about what happens to a foreman when he is no longer needed,—he doesn't fit? Does he return to the rank and file?

Mr. Dahling: He returns to the rank and file and loses no seniority by the transfer.

The Chairman: Does his seniority still go on while he is a foreman or it is that the clock stops when he becomes a foreman and then you wind it and it starts again?

Mr. Dahling: It accumulates its seniority while he is

a foreman and he takes back seniority when he goes back to the rank and file. That is the interpretation of the contract.

The Chairman: The demotions are cared for in that way, that is, the grievances—

Mr. Dahling: That is the interpretation of the contract I am told by the C. I. O.

Mr. Reilly: Mr. Dahling, a moment ago when Mr. Houston was questioning you about the right of the union involved here to be heard on promotion saying that they had nothing to do with promotions to foremen's positions. That is simply because they are outside the bargaining unit prescribed by this collective agreement which you have now? Isn't that so?

Mr. Dahling: Well, that's true, of course. The C. I. O. union has nothing to say about who management will promote from the ranks. That is a matter of the management.

Mr. Reilly: But my point is that that is outside the
45 collective agreement?

Mr. Dahling: That's true, I presume, and that, of course, is one of our fears and I don't think it is without foundation, that if this unionism continued up through the ranks these things are going to appear. There have been strikes before and there will be strikes, because of that same situation, that so and so should have been promoted and he wasn't promoted.

Mr. Houston: Well, after the refusal of Packard and other companies to recognize the Foremen's Assocation or the foremen's group for bargaining purposes—

Mr. Dahling: It is our very definite position, sir, that it has not led to a strike. The union methods, the union organization, the War Labor Board Panel Report,—if you Gentlemen have not read it, specifically finds that the foremen had no substantial grievances.

Mr. Houston: Didn't they also say that the relation between the foremen and management was rather weak?

Mr. Dahling: They pointed out certain things that perhaps could be corrected, but they did find that there were no substantial grievances of foremen and they also found—

Mr. Houston: Well, if they had no grievances or problems what are they in here for?

Mr. Dahling: They are in here because certain
46 opportunists, sir, thought it was a fine opportunity to organize a group of men.

Mr. Houston: Well, I don't agree with that statement, but then you have a right to say it, but in the Packard case, when you had an election in Detroit, as I recall the vote it was about 498 to 2. Now, do you mean to tell me that the 498 were wrong in wanting to organize? They had no problems?

Mr. Dahling: In Detroit as elsewhere propaganda will not only wear down resistance but will bring about organization. I suppose in Detroit there are more isms per square mile than anywhere else. Certainly, if a foreman—if it is going to cost him $2.00 a month to belong to an organization, and particularly if that foreman is more or less union minded and because of the stress and because of the strain on getting out this war production he has not been given and could not have been given the proper instruction or as much instruction as he properly should have been given will pay the $2.00 and go along with that particular union. That is not the question that is involved here, sir, as I see it. The question involved here is whether or not management should by an order of the government be unionized. It is our position that that should not be done.

Mr. Houston: You don't think it would work if it was done?

Mr. Dahling: I don't think it would work.

47 Mr. Houston: Do you have guard units at the Packard plant?

Mr. Dahling: We have guard units.

Mr. Houston: Do they belong to the same union?

Mr. Dahling: They are a separate unit of—

Mr. Houston: They belong to the same parent unit?

Mr. Dahling: The same parent unit.

Mr. Houston: What trouble do you have because of that?

Mr. Dahling: I will say that we have had no trouble with that unit at the present time but it not only might happen but there is quite a distinction between a guard and a man who is the right-hand of management in carry-

ing out management's policies or the right-hand of management in connection with—

Mr. Houston: You opposed the guard unit, at the same time.

Mr. Dahling: We opposed the guard unit at the same time.

Mr. Houston: Now you say they have worked and they have had no trouble.

Mr. Dahling: It has worked up to date. We are dealing with potentialities. We have only one case here, the Ford case, which has been gone into by this Board somewhat through the questioning of Mr. Nelson and Mr. Keys. There is nothing in the record on this Ford case. I don't know what would be shown if you made a complete study of that case.

I do know this, sir. I know that the Packard Motor
48 Car Company has been in business since 1903. The Packard Motor Car Company has dealt with unions. The Packard Motor Car Company knows what these union principles are. The Packard Motor Car Company is interested in only one thing and that is putting out war production at the present time and putting out a car in peace time that can be sold at a price so that it can employ people.

Mr. Houston: Well, its great production has been made during this war. Do you think that the unionization of the workers would help or hurt?

Mr. Dahling: I wouldn't care to answer that question. I don't think the unionization of workers,—I do not personally think, that the unionization of workers had helped, no. And I don't think that it is because of the unionization of the workers in itself. I think it is because of the way the workers have reacted, or rather the leaders have reacted to the authority that they now assume they have and the power they now have but I wouldn't care to get into a discussion of that at the present time. I believe it has affected production—

Mr. Houston: Adversely?

Mr. Dahling: Adversely, yes.

Now, I have taken more than the time allotted;

The Chairman: You have 32 minutes.

Mr. Houston: May I ask just this one question?

49 In the event the Board should go ahead and find the unit here for bargaining purposes among the foremen would you be in favor of the four levels or one unit.

Mr. Dahling: We could never be in favor of the one unit, because we think it is fundamentally unsound to have a man who has the right to recommend the demotion or the promotion of another person in the same union with the person over whom he has that power and authority. We think it would be just as bad as if you would order us to admit into membership in the maintenance workers union these foremen.

Mr. Houston: Well, as long as the foremen are organized independently don't you think that would work better than if they were affiliated with the rank and file?

Mr. Dahling: The pressure would be entirely too great.

Mr. Houston: Has that been true in these other industries where by tradition the foremen have been included with the workers?

Mr. Dahling: These other industries, sir, were not before the Board. I frankly am not familiar with them. I think the War Labor Board adjusted that. They had not even gone into it but they did point out that even in those unions there was no interference at all with the hiring and discharge of the foremen by management. That was not a matter in which the union in which they were members took part. I can't speak from experience with re-

50 spect to those unions. I can't speak for the automotive people.

The Chairman: I think you cited that before.

Mr. Dahling: I am merely quoting the War Labor Board.

The Chairman: Yes.

Mr. Dahling: Their finding in that matter. I have had no personal experience—

The Chairman: In the printing trade you do find objections to discharges—of the foremen.

Mr. Dahling: Whatever may be the situation in the printing trade the automotive industry is not the printing trade.

The Chairman: No.

Mr. Dahling: We know what the situation would result in if—

The Chairman: You were talking about big industry as against shops.

Mr. Dahling: As against shops and as against crafts and as against craft units. I am sorry I didn't have an opportunity to go into these matters—

Mr. Reilly: It has been suggested by some commentators that a method of meeting this situation might be for this Board to certify independent foremen's unions. Have you any comment on that, sir?

Mr. Dahling: We feel frankly that this union did not want independence. I turned down the possibility.

51 Mr. Houston: Do you have any proof of that?

Mr. Dahling: We believe that there is in the record proof of the fact that the result will be that they will be dominated or taken over.

Mr. Houston: Isn't that speculative?

Mr. Dahling: Mr. Donovan is going to discuss that matter and I will refer you to him.

(Discussion off the record.)

ORAL ARGUMENT OF MR. PERCY DONOVAN.

Mr. Donovan: Gentlemen, there are only two things that I had rather wanted to discuss. One of them however was on a question that Mr. Houston asked with reference to the alleged independence of the F. A. A. the petitioning union here.

It calls itself an independent union, it petitioned as such, and as a matter of fact both at this hearing and before the War Labor Board Panel hearings the petitioning union sought to picture itself as something a little different than a regular union like the C. I. O. and they made a mild approach. They emphasized social and fraternal features and that sort of thing, feeling that that would appeal more to governmental agencies from whom they were asking concessions.

But I think it is necessary to look at the background and the setting in which the Board must decide the question of representation involved here as far as the

52 Packard Motor Car Company is concerned.

The Chairman: May I ask you a question there?

What findings did that Commission of Three arrive at?

Mr. Donovan: Their panel's conclusions in the discussions on that particular point were that it was speculative. I think I could almost quote whether or not the F. A. A. would be able to remain independent is uncertain or speculative.

The Chairman: Now, let me ask another question.

Mr. Donovan: Yes, sir.

The Chairman: Suppose that this organization were certified as the result of Board procedure here and later certified as independent and then later became affiliated and became dominated, could the Board take care of that by decertification?

Mr. Donovan: I am going to answer that question at length if I may.

The Chairman: Well, you don't have enough time for that.

Mr. Donovan: It is rather difficult to deal with this question of independence which I regard as highly important. For instance, Mr. Chairman, this Board has had this question before it of the significance of the independence of a petitioning supervisory union. Of course, in the General Motors Case the Chairman's own observation in the Maryland Dry Dock case further emphasized the im-
53 portance of the independence of a petitioning union of supervisors. In that case the Chairman observed as follows: "I believe that in the interest of efficiency its determination as to the boundaries of the appropriate unit the Board may in its discretion require that supervisory and subordinate groups shall be independent of one another." And you quoted some detail. Then the Chairman said: "Hence, I would be inclined to concur in the dismissal of the petitions in this particular case if the decision to do so were predicated upon the petitioning union's failure to make proper provision for organizational autonomy of the supervisors whom it seeks to represent."

The Chairman: I am quite familiar with that. I would like a more definite answer to the question I asked, whether or not while this is speculative, if the thing which

is now speculative became facts and could be proven could that be handled by this Board taking away the certificate?

Mr. Donovan: I think that question may never arise and because this union is not in fact now independent, and it could never become or remain so.

Mr. Chairman, this union lives and has its being in the shadow of the C. I. O.

The Chairman: Would you say it is speculative—

Mr. Donovan: Well, but you asked my view. I am giving you my views and I can give you some reasons
54 why that is true. It is not independent now.

The Chairman: I read that report and I remember what they say about it.

Mr. Donovan: They expressed doubt that they could remain an independent organization. I would like to—

The Chairman: Well, now, just assuming that is correct, I want an answer to my question whether or not this Board couldn't decertify an organization which had been certified as independent and then became affiliated with an organization of the rank and file?

Mr. Donovan: You mean what should the Board do?

Mr. Houston: No. Could the company file a motion with the Board for decertification?

The Chairman: Would the Board have that power? Can't the Board undo what it has done?

Mr. Donovan: I suppose the Board, if it could reverse its position in the Maryland Drydocks case could probably entertain a petition to reverse other matters and make some changes. They could entertain a petition to express the opinion on the legality eventually of their action, and the refusal to bargain if one followed would be very speculative.

The Chairman: Well, the Maryland Drydock case is not involved when you have questions of rates and so on. We certified certain organizations and then there have been objections and further hearing and it has been
55 moved to take away the certificate because of thus and so.

Mr. Donovan: I think the Chairman could decide that question right on the record of this case, right now, as to whether or not F. A. A. is in fact independent, and find

that it is not so, and has no hope of becoming or remaining independent.

Mr. Houston: What is that,—because it is in the shadow of the C. I. O.

Mr. Donovan: Mr. Houston, it is because the C. I. O.—Detroit is not only the mass production capital of the country but it is also the home of the powerful and the mighty C. I. O. They hold the production workers' contracts for all the companies involved in the Foreman's case including the Packard Motor Car Company, of course. They control the rank and file workers. The foremen are the first line contact of management. It is their only means of control and their first means of control over that mass of workers, all of whom are members of the C. I. O. The C. I. O. has a great stake in watching very carefully what the foremen do. They have had a great interest in drawing them into the full current of the labor union movement the better to secure their cooperation or if necessary to control them. They issued circulars of a cheering and applauding sort that the foremen were getting under way. They are still a young organization.

56 The Chairman: Was that the International or Local?

Mr. Donovan: Well, they were issued by various C. I. O. bodies, not the International. Michigan C. I. O. Council was one.

The Chairman: As I recall the particular reports it was first a case where a foreman picketed and he was disciplined by the C. I. O. organization. And it was said that the foremen being organized would go through picket lines established by the rank and file.

Mr. Donovan: Our record contains definite evidence of the fact that picket lines were not run by the rank and file and that was one of the additional reasons why the plant had to close.

Now, Mr. Keys has recognized his timidity and and uneasiness about the C. I. O. so much so that he found it necessary to go down to Cleveland and talk to the top C. I. O. men who happened to be assembled in the Hotel Statler at that time in Cleveland and he said that he was assured by the C. I. O. of nothing but their moral support

at that time but when he was pressed in the hearing before the Board he said,—he added, and I am quoting it: "Of course, the C. I. O. is a big organization and I don't know everything that goes on out in the field." Well, there was quite a bit went on out in the field. Young as this F. A. A. organization is it timed and synchronized a series of strikes in the Detroit area in
57 May at Briggs, Packard, Chrysler, and the other plants I have mentioned.

Mr. Houston: Why?

Mr. Donovan: Why? Because the foremen were handed a lot of organizational grievances that they never knew they had and got all steamed up and drawn in by astute organizers and all of them went out on strike. And the foremen, Mr. Houston, in the plant that didn't go out on strike were fooled by the C. I. O. They pounded on desks. They stopped working. They stood around in groups singing. They shook dice. They booed Army and Navy Officials. They came into the plant trying to restore—I am talking about the C. I. O. now helping the objectives of the foremen's strike now. And the Army authorities had to close the plant because they wouldn't allow production to proceed under those conditions.

Mr. Houston: Would the foremen strike primarily because the company refused to recognize them?

Mr. Donovan: That's right, and that was the objective,—the union objective of the F. A. A. and it is not the individual objective of many.

Unfortunately, Mr. Houston, the kind of material that is in Mr. Nelson's brief and the kind of material in Mr. Keys' radio speech was to such an extent full of propaganda which created and engendered in the foreman a hostility towards management that he never felt and
58 after a time they were able to convince even some $7,000 a year foremen that they had a grievance. The union told them they had.

Mr. Houston: Well, you will agree—

Mr. Donovan: And they thought they were the forgotten men. So, it isn't too hard to get an organization started.

Mr. Houston: Do you agree that the foremen in Packard have done a reasonably good job, competent job?

Mr. Donovan: We think they have, and we think that that situation ought not to be impaired.

Mr. Houston: Well, has it been impaired up to this time?

Mr. Donovan: We could find trouble in the recognition of the going strength of the Foremen's Union if it is given collective bargaining rights. The situation is going to get plenty worse if this Board awards them collective bargaining just like a regular union, like the C. I. O. has and that is just what they want and that is the only thing they want.

Mr. Houston: What would you suggest to cure this industrial strife, strikes and so forth?

Mr. Donovan: I suggest that the Board look at the employer's side for once instead of the Union's side. Every time the union has an objective and some leader has a group of men and the employer doesn't buckle down and say: "We will do this and we will do that" then it is the employer that is causing the strike. Employers and executives are having their hands full at Detroit today
59 trying to get out production of war materials to help a government that is in a war and there are a lot of citizens over there in uniform have voted in places like Holland and along the border line of France and Germany doing what they are doing for $75.00 a month without any overtime, no night work and all that sort of thing and they haven't any security.

Now, we have to spend weeks and weeks listening to grievances which foremen individually do not really have, organizational grievances, Mr. Houston, which have been handed to them by an organization and which they have been sold on, and they have sought to draw these foremen into the full current of the labor union movement and Mr. Keys is well aware of the fact that the C. I. O. was watching it very very interestedly. And their action in the past in aid of the foremen's strikes illustrated and demonstrated the close cooperation between that powerful organization and the foremen. And that is one of the reasons why they are not now independent and can't remain independent.

The Chairman: Is that all in the record?

Mr. Donovan: These things are all in the record.

The Chairman: Of course, we always read the record.

Mr. Donovan: I have not referred to a thing that is not in the record, Mr. Chairman.

The Chairman: And we will read it carefully. Now, you have used 11 minutes, and you said you had two
60 points you wanted to make and you made one.

Mr. Donovan: Well, I did want to refer to Mr. Nelson's brief. There are just one or two things.

The Chairman: My point is that it is getting late.

Mr. Donovan: May I refer to just two things? They are very short. They will take about a minute.

The Chairman: Very well.

Mr. Reilly: Mr. Donovan, there are just two points that have been raised that I wanted to ask about. Irrespective of what causes these strikes it was apparent from the nature of them that they couldn't have been effective unless the U. A. W. at least cooperated to the extent of forbidding any of their members to take the places of the striking foremen?

Mr. Donovan: That it could not have been effective?

Mr. Reilly: Yes, unless the U. A. W. had cooperated.

Mr. Donovan: Conditions vary but little as between some of the large plants. At the Briggs Milwaukee Avenue plant, for instance, the foremen were able to close that plant without the assistance of the C. I. O. workers by the use of lead pipe tactics including the compulsory sleeping in the plant of the superintendents who were afraid to go home or outside of the plant. They got most of the foremen out of that plant and it wasn't until the last day
of the strike in that case that there was any picket
61 line and the plant was closed because on Saturday and Sunday the C. I. O. declined to run the picket line. At other plants there were closings not caused entirely by the C. I. O. but because of the lack of supervision.

Of course, the C. I. O. moved any foreman who didn't want to strike and come in and there were quite a few of those. And they made it practically impossible for them to function, and, of course, that assisted the strike.

Mr. Keys, on the record, says that he recognizes the value that it has for the foremen on strike to have the

C. I. O. decline to allow a rank and file man to be promoted during a strike because, of course, if they can strip the foremen out of the plant it is pretty hard to run a plant without foremen.

Mr. Houston: Do you think that the C. I. O. people are in the A. F. of L. and that there are A. F. of L. people in the C. I. O.?

Mr. Donovan: I don't think we have to decide that question on this record or in this case, Mr. Houston.

Mr. Houston: No. But you are talking here that they are living in the shadow of the C. I. O. Is the C. I. O. going to reach out and take them over if they want to?

Mr. Donovan: I can't see very much difference between a man or foreman who is a member of the F. A. A. and a member of the C. I. O. They are almost interchange-
62 able so far as their interchangeability so far as their active cooperation with each other during the foremen's strikes, state that a great variety of Detroit plants at the same time and for the Union objective of the Foreman's Association of America, the petitioning union here, which was to force concessions, namely, collective bargaining and a contract, and that is why those strikes were staged. There was no hesitation.

Mr. Houston: Now, in Chicago, in the first Montgomery Ward case, it is my understanding that the Teamsters' Union or the A. F. of L. were sympathetic because of the C. I. O. and financially helped them. Are they going to take them over?

Mr. Donovan: We don't think that they will. If they don't come and cooperate they will, sure, and you won't have any F. A. A. independent. They are not independent now.

Mr. Houston: You haven't offered any proof here yet that they are not independent.

Mr. Donovan: Well, Mr. Houston, if you are willing to read the record there is certainly factual proof that you don't have to speculate on as to the relations between the C. I. O. and the alleged independent with the F. A. A. If there were time I could read it. It can't be done in a minute. But it is there.

The Chairman: We will read that.

Mr. Reilly: It was intimated here that the possible
63 solution for keeping this union independent might be that you have the certification state that this union will remain the bargaining agent only while it was unaffiliated and really independent. Now, do you think that this Board in the light of the majority opinion in the Federal Trucking case and Hudson and Packard cases on guards, where the majority of the Board declined to—or rather held that it had no power to say who the bargaining agent could be. Do you think the Board could enforce something like that in the Foremen's cases?

Mr. Donovan: Are you asking, Mr. Reilly, if I believe in view of the Sixth Circuit opinion that you refer to,—

Mr. Reilly: I was speaking of the opinions of this Board—But the point I am speaking of wasn't squarely passed upon there.

Mr. Donovan: Are you asking me if I believe that the Board has the power if they should make an order certifying the F. A. A. that it simply subsequently came to their knowledge or information otherwise?

Mr. Reilly: Yes.

Mr. Donovan: Well, it seems to me that the Board is confronted—our candid position, Mr. Reilly, is that a union of supervisors is inappropriate whether it is independent or not but we think that that is peculiarly so if there is a reasonable question about its independence.
64 And that position is related to the Sixth Circuit opinion which you mentioned because after all this Board must make some accommodation to the policies of other and equally important Acts of Congress other than the National Labor Relations Act and the national welfare and the public policy involved. And those considerations, in our opinion, make it inappropriate to grant this petition in this case and we think it should be dismissed. We go further than that, Mr. Reilly, and we believe that even within the confines of the National Labor Relations Act itself the Board has not the legal discretion to certify a union of supervision because we don't think it is within the Act. But that we think that within the boundaries that were touched upon by the Sixth Circuit Court of Appeals that they must accommodate themselves to the poli-

cies of other equally imporant acts and to the public and national welfare and that also would preclude them.

Mr. Houston: Do you believe in the right of employes to organize?

Mr. Donovan: Of the rank and file worker.

Mr. Houston: Employes.

Mr. Donovan: Well, now, I don't know what you have in mind by "employes." I believe that the rank and file workers should organize, Mr. Houston. I think many intelligent men think they would be crazy if they didn't

65 Mr. Houston: Did the principle of unionism get them?

Mr. Donovan: Well, we all agree on that basic principle. I believe any intelligent man would, but not all of us are willing to go as far as to approve the methods of union leaders and the elements which appear to have controlled them. I think they have been emboldened and allowed to go a long way and that has been a bad thing and now they are drawing the foremen into that same situation and the foremen will find themselves, willy-nilly, doing things that they never meant to do. They are being drawn apart from management and this thing is creating a hostility that they don't feel, the individuals themselves, at all.

Mr. Houston: Well, the average foreman is not intelligent.

Mr. Donovan: He is not intelligent?

Mr. Houston: I say he is intelligent.

Mr. Donovan: We think so, by and large.

Mr. Houston: Why is he so easily led and strayed over by propaganda?

Mr. Donovan: Well, men don't like to be pressured every day at the bench. You will find men who will have an appeal made to them by a lodge—

Mr. Houston: You just boil down,—you don't admit the foremen have got any grievances at all, that would entitle them to bargain or organize.

66 Mr. Donovan: I think the foremen are one of the best off groups in the country today, that they haven't any real grievances, that they are extremely well paid, that they are treated with consideration and respect

and care by management and valued and prized by management. They are the source of management's higher executives and to split them up into a separate union and put them in the union current and give them separate interests and a separate loyalty to satisfy is inappropriate.

Mr. Houston: Well, they are not the part of management, are they, that they should share in the bonuses put out by the management?

Mr. Donovan: Well, I don't regard that as anything that justifies collective bargaining and unionism.

Mr. Houston: You have got collective bargaining on the part of management.

Mr. Donovan: You are talking about bonuses, Mr. Houston. That's all a question of compensation. Now, the foremen are they underpaid in the opinion of the Board?

Mr. Houston: The company sets a policy. They set all the policies. They decide to vote a bonus to management. These fellows are part of management but they get no part of the bonus.

Mr. Donovan: These men are not underpaid. There is no question why bonus should have the consider-
67 ation of the Board.

Mr. Houston: Well, it might be that the management is underpaid, the top management.

Mr. Donovan: There has been no suggestion by the Board, so far as I know, or by the War Labor Board that the foremen as a class were underpaid. They placed them in the lower grade of the income bracket.

The Chairman: You have used 20 minutes. I will give you ten. That's enough, isn't it?

Mr. Donovan: Well, I'll do my best.

The Chairman: Thank you.

Mr. Nelson.

ORAL ARGUMENT OF MR. NELSON
(On Rebuttal).

Mr. Nelson: Gentlemen, I will be very brief about certain things here on the record.

I think Mr. Dahling fell into the error of claiming that promotion of maintenance and production workers could

be recommended only by general foremen and I want to say briefly that the record doesn't support anything of the kind. Any foreman may recommend the promotion of a maintenance and production workers.

Now, as to promotion of foremen I think also anybody may recommend. The ability to recommend, if it is an ability, or power, is practically universal in the Packard plant and in industry, mass production industry, in general.

68 About the guards, in the Packard plant on the record made here the guards have succeeded to a great deal of the previous power of foremen in the matter of discipline, and the record clearly so shows, that the word of the guard as to what a maintenance or production or foreman does is practically the controlling thing. So the power of discipline is not only passed out by virtue of these rules out of the hands of the foremen and by reason of other departments but it is passed into the hands of guards and so if any objection could have been made to that aspect of foremanship as against an organization to be certified here it would now be more appropriately made as against the guards.

Mr. Houston: Well, has the work of the guards deteriorated any since they have become organized?

Mr. Nelson: I would answer that emphatically in the negative and the company doesn't make successfully any such contention certainly on this record. But I think generally it is true that the organization of the guards has caused their work to deteriorate. On the other hand, more confidence and more power has been placed in the hands of the guards in the Packard plant since their organization and since the affiliation of that organization with the C. I. O. than ever at any time before. I think that is a true statement on this record, and I am sure that it is true in fact.

Mr. Houston: The spirit of unionism hasn't affected

69 their work any?

Mr. Nelson: Of course, it hasn't. If it has affected it it has improved it because it has made those men secure in their positions to the point where they can level an accusing finger at other men who are backed by adequate

power in the plant, namely, by the same union that they are members of by affiliation and that you get there a man accusative in the guards position because the proof of the need of discipline is in the hands of the guards in the Packard plant in a peculiar sense. Now, the guard is backed by the power of the same union as the man against whom he levelled an accusing finger and therefore he feels secure in doing it. He performs his duty without fear.

Now, the foreman needs to be put in something like the same position in a feeble organization, as my brother described it, feeble in everything but imagination.

Now, one other matter here about the productivity in the plant. The C. I. O. has been practically one hundred percent organized in maintenance and production workers including the guards in the Packard plant. The foreman of an organizable level have been organized in one chapter practically one hundred percent,—and they don't deny it—for two and a half years and the Packard Company again and again and again in its specialized kind of production and a very critical line of production has
70 been cited again again and again and again for production.

Now, in the face of that record they talk here about organization, the union spirit interfering with production. Why, when these mistaken men get out of the way and give union organization a chance in this country we will show them what we can do in the way of production, but we have done pretty well so far in the face of this anti-union spirit and this opposition to the spread of the feeling of one man for another that is the essence of unionism.

And then we, of course, come to the talk about not being independent. Of course, I want to be frank with this Board about this. Please lay some stress on that characteristic. Though it ought not to be the determining characteristic, perhaps, as some other union contends. We don't care to get into any controversy about that. What we say is that this record established beyond any peradventure that the Foremen's Association has at all times been and is now absolutely independent. Whatever that means to the Board the fact, I think, is established by the record. Now, a small organization in the fight that we

have been engaged in about the first of every month we wish we had a financial angel, but the other 29 days of the month we get along without one. After we get our bills once paid then we hobble along to the next impediment and we haven't got any sugar or anything of the kind and there isn't a scintilla of proof in this record. In the shadow, yes. The foremen will always be in the shadow of larger numbers.

71

Mr. Reilly: You speak of no proof in the record. Wasn't that because the Trial Examiner rejected certain offers of proof as being irrelevant?

Mr. Nelson: Well, that wouldn't be proof, Mr. Reilly. Irrelevant, or hearsay or something of that kind.

Mr. Reilly: Well, what I am getting at though is: you are now making the argument that there is nothing in this record that shows your union is not independent.

Mr. Nelson: That is right.

Mr. Reilly: Now, I am not saying that the record shows that your contention isn't so, but wasn't there evidence offered to show that close collaboration with the C. I. O.—wasn't there evidence offered to show that support of the C. I. O. in these strikes had been sought and received?

Mr. Nelson: I will admit on the record that when the foremen struck there was a direct and express agreement between us and the responsible C. I. O. leaders that members of the C. I. O. maintenance and production workers union would not be permitted to take the place of foremen. Now, that is a two-way proposition. If they have a strike we will be called on to say that we won't do the work of striking men. But that isn't affiliation.

72

Mr. Reilly: Well, it is not affiliation in the sense of a formal adhesion to one federation but isn't that the very basic agreement between one union of the building trades and another which makes it possible for the building trades groups, like the carpenters and painters who can be very easily recruited and replaced,—isn't it the existence of a similar agreement of that sort with unions which have a monopoly of the skills like structural steel workers or the electricians which make the union organization of the carpenters and the painters possible?

Mr. Nelson: Well, I would rather put it "makes it effective."

Mr. Reilly: Makes it effective, yes.

Mr. Nelson: But the object of organization is effective. We are not trained in the school of efficiency by these employers just to forget all our lessons and become utterly inefficient in our own interests. It's a matter of efficiency.

Mr. Reilly: But we are not speaking of that. We are speaking of whether or not the Foremen's Association is really independent in view of the ability to make agreements which go to the very key of the whole effectiveness of strike action, with the principal union and production workers.

Mr. Nelson: Well, I would say this, that that relates really more to the question whether we are a genu-
73 ine union or a stooge outfit and not to any matter of affiliation or membership. I would say that our ability to maintain ourselves within the limits of our numbers is just as great on that proposition as the C. I. O. and the C. I. O. by the same token when it comes to a strike, we will say, and it comes to the Foremen's Association Chapter President, and says: "Now, look, tomorrow we are going out. Are your men going to step up to the bench every one of whom is capable of stepping up to the bench, which is not true of every man in the level of the maintenance and production workers. We might have trouble finding a foreman among them, but among the foremen they can find a man who can step to every bench if necessary.

Mr. Houston: Do you have any agreement with the C. I. O. that they will not cross your picket lines?

Mr. Nelson: That we adjust in each plant in each incident. In certain places,—take the Republic Steel,—the maintenance and production workers refuse to cross the foremen's picket line. That is a matter of union spirit.

Mr. Houston: But you don't have any understanding with the C. I. O.

Mr. Nelson: No general understanding.

Mr. Houston: Don't you have in your Ford contract that you remain independent?

Mr. Nelson: We have an agreement to do so. We incorporate it in every contract.

74 Mr. Houston: And you have it in your constitution?

Mr. Nelson: And it is in the constitution and the constitution is in evidence, in this case.

Now, the acts of like minded men on a field of conflict are something, I think,—they are not aside from this controversy but they don't argue affiliation and they rather on the other hand establish the necessity of a separate agreement in each particular case.

I am bound to say I hope that I will never hear of a foreman crossing a picket line by anything but agreement. We don't want these foremen to be just mere appearances of union men. The essence of union action in a strike is to withdraw labor power and skill from the use of a given employer. And I hope that we won't be faithless to our obligation to our brother worker, and we hope he won't be to us, but as an equal give and take. It does not argue anything of the kind that these gentlemen here argue.

Mr. Reilly: Well, I would agree with that, sir, but doesn't that indicate though the very point that you wish to make namely that these two groups are so independent of each other that there can't be any question of this problem of dual allegiance arising?

Mr. Nelson: My view is yes that it does show that there can't be. In other words, the foreman cannot be as we view the matter properly servants in modern in-

75 dustry in a mixed or a dual organization. They are best served in an independent association like the Foremen's Association.

Now, what I want to make as clear as I know how is that we at the same time are union men just exactly as the carpenters, as Mr. Reilly suggested—the carpenters and the masons alongside of each other—they are in separate unions. They happen to be affiliated but that wouldn't be necessary for the purpose of this argument. They are in independent organizations in unions that happen to be affiliated. We are neither affiliated nor individual.

Mr. Houston: There is no question but what they owe their loyalty first to management. We admit that. But in

matters of wages, hours, working conditions, then I think they have a problem.

The Chairman: May I join the remark there—when you talk about the brother workers—

Mr. Nelson: Sure,—

The Chairman: —and that sort of thing.

Mr. Nelson: I didn't say that as I remember. But I should have.

The Chairman: Yes you did. It is on the record.

Mr. Nelson: Very well. I don't take it back.

The Chairman: They are fellow workers. I thought your position was that instead of being two classes, management and the fellows who work down in the mines,

76 that you have got three different groups. You have got top management. You have got these foremen people, their right arms, and then you have got the hands —the hands under them. Now, just what is your position. Do you think that you are intermediate between management and the rank and file or do you think that you are the older brother, and somewhat the stronger brother, those who constitute the hands?

Mr. Nelson: There are the four divisions in modern mass production industry. There are owners, managers, supervisors and workmen.

The Chairman: Now, I am interested in—

Mr. Nelson: I beg your pardon?

The Chairman: I am interested only in the relationship between the managers just above and the workers just below.

Mr. Nelson: Well, then, this problem—

The Chairman: Do you belong to one or the other or do you have problems of your own that you want to work out by conference and agreement if not by agreement and by arbitration? What is your program?

Mr. Nelson: We have differences with management. We desire to solve those differences by conference through collective bargaining of our group with management. It does not really involve this other at all as far as we are concerned on the organization plane.

The Chairman: But you don't propose to deal with

77 these problems with the rank and file in your contract?

Mr. Nelson: Not at all.

The Chairman: But when they are dealing with them and strikers ignore the picket line you are going to side with them and not with management, that is, you are going to—

Mr. Nelson: I couldn't say that in advance.

The Chairman: I thought you said that a while ago.

Mr. Nelson: No, I said each case for itself. But so far as I am concerned the Foreman's Association—

The Chairman: This is just your personal opinion?

Mr. Nelson: That is right. That is right.

Mr. Houston: Well, what I said, Mr. Nelson, was that I thought the foremen owed their allegiance to management. There isn't any question about that. They are a part of management, a new part of management, and they set no policy and that's all right. We expect them to do that. But when they have problems of their own, wages, hours and working conditions then I think they should have a voice.

And then grievances—you haven't said anything about grievances. Management has said this morning that they have no grievances. I would like to know what some of their problems are. I don't mean to go into great detail.

Mr. Nelson: Well, classification is one, rate of pay is another. Seniority is another. Promotions, layoffs or rehirings are others, what order those things should
78 be done in. As it is now there is complete chaos in that. It is entirely in the hands of the employer. He may do it with regard to merit or wholly without regard to merit.

The Chairman: You have said two things in one. You have problems of classification and this, that and the other thing, now, I want to ask this question: Can the foreman have a grievance if their wages are good, hours are good, promotion is good, and demotions and such are good and that sort of thing, do you have an interest in having the say about the standards that should be set from time to time?

Mr. Nelson: The record here shows, as Ray says, there are some men getting $7,000 a year felt they had grievances sufficiently to take an active part in the Foremen's

Association and voluntarily pay their dues year in and year out, bec.. .e a man who has $7,000 a year—

The Chairman: You have men in there who belong to churches?

Mr. Nelson: That's right. And who belong to civic organizations for the purpose of protecting what they have. This man, if he has a $7,000 job, he has skill, he probably has age, he probably has length of service and he wants to know that he isn't going to be the victim of an arbitrary determination by somebody either on a personal basis or something beside the merit basis, and if he has no other grievance in the world now he has the grievance that he hasn't got a word to say about that, if he isn't organized. He wants to be considered.

79

Now, there is one other thing,—

The Chairman: That is rather apart from classifications, overtime, promotion, demotion and so on.

Mr. Nelson: It is in a way apart from it but his device for getting that protection is an agreement setting up a proper classification, proper recognized and enforceable rules with respect to skill and seniority and he gets the protection of a general agreement with the company or the employer and among his own. He is protected from the chiseling of his own. He is protected from the arbitrary power of the employer by an agreement. And he comes into the association so far without any checkoff or maintenance or anything and voluntarily pays his money and takes his part.

Mr. Houston: Well, does he want these things corrected, or do you want them corrected?

Mr. Nelson: We are willing to help him correct them but it is of no consequence to me personally. They have intimated that Mr. Keys and I have got together and reminded the fellow of his trouble. Maybe we have. But he agreed with us a hundred percent.

There is one other thing I want to call the Board's attention to here about the power to decertify. And it is interesting to note what the Fifth Circuit Court of Appeals said in this case in 15 Labor Relations Reporter, in this case in conclusion that the order made in that case,—the Jones & Laughlin Steel Case,—was

80

without prejudice to an application to the Board or to us to reopen the case should unusual difficulties in that in fact arise in the operation of this bargaining unit intimating that it was the opinion of that court which is the last case I found, of that rank, that the Board and the Court would have the power to retain jurisdiction and take care of anything that happened that was untoward in the matter of experience.

The Chairman: Gentlemen, keep in mind that those who want to be heard this afternoon at 2:30 will divide themselves into two groups to decide who is going to speak and in what order and for what length of time. The Board will give each side one hour beginning at 2:30 and I would like to have the list.

(Whereupon the Board adjourned to 2:30 p. m. the same day.)

81 Afternoon Session.

The Chairman: Let us proceed, Gentlemen. Mr. Kunkle of General Motors, ten minutes. (Balance of the call off the record.)

I will recognize Mr. Jeffery first and then return to the regular list.

ARGUMENT OF MR. JEFFERY.

Mr. Jeffery: If the members of the Board please, I represent the National Association of Foremen which is an organization more than twenty years old with 16,883 members as of January 31st, 1945, organized in 110 units in 94 cities in 31 states. That organization's membership is composed of 79 percent foremen. May I use the term "working foremen," 8 percent engineers and technical men and the other 13 percent men in higher supervisory capacities. That organization, by the terms of its constitution and by the action of its members and officers is opposed to collective bargaining for foremen. It would like to go on record, and we have asked permission and received it to file the statement on behalf of the group. Thank you.

Mr. Reilly: Has the matter of the foremen's controversy become very much as a matter of issue before this Board and the War Labor Board?

Mr. Jeffery: Yes, Mr. Reilly, we have had, of course, a constitution since 1924. In 1938 this was an issue
82 even then and at that time the charter or the constitution was specifically amended to provide in writing for the stand which I have just described.

The Chairman: In 1938?

Mr. Jeffery: Yes, sir, and more recently as late as in January of this year while in deference to the wishes of the administration and very properly so no national convention was held. The directors met and reaffirmed that action. The convention itself was waived by reason of transportation.

The Chairman: Where was the organization set up and under what condition? If that is a fair question.

Mr. Jeffery: This organization grew out of what was known as the Ohio Federation of Foremen's Clubs and they existed in the years of '21, '22 and '23. There began to be so much interest evidenced in the organization that in 1924 they decided to make a national organization out of it. It was incorporated then as a corporation not for profit under the laws of the state of Ohio and it has had a continuous and steady growth from that time on. It has existed in periods of depression and prosperity and throughout the war period and it grew out of that original Ohio organization.

Mr. Houston: Now, your organization is opposed to foremen organizing and bargaining collectively?

Mr. Jeffery: They are opposed, Mr. Houston, to foremen's organizations bargaining collectively.

83 Mr. Houston: They are not opposed though to their joining your organization?

Mr. Jeffery: They are not opposed to them joining any organization, Mr. Houston, that does not permit collective bargaining by that group.

The Chairman: I suggest that you follow the order that you followed this morning. We will hear the men on the labor side first, and then the industry side second.

Mr. Thatcher, you were first on the list.

ORAL ARGUMENT OF MR. HERBERT S. THATCHER.

Mr. Thatcher: I will be very brief, Mr. Chairman.

I am appearing on behalf of the American Federation of Labor. The American Federation feels as far as the particular merits of this particular case is concerned that the unit as requested should be granted. We feel that the Board is not at this time prepared to permit the foremen to be organized into the large International organization, but they should at least be accorded the right of independent representation. We feel that is the minimum that they can and should be granted.

In case the Board has any doubt on the subject I can state that the A. F. of L. has no intention of taking over this group. So there should be no problem there.

Mr. Houston: Can a union of foremen be independent?

Mr. Thatcher: Well, now, do you mean can they be independent insofar as their relationship with the
84 employers is concerned or what?

I don't see why they can't be independent.

Mr. Houston: You were not here this morning.

Mr. Thatcher: No. Offhand I can't see why they can't be independent.

Mr. Houston: We heard this morning that they were living in the shadow of a larger union. They could be taken over at any time the larger union saw fit to take them over.

Mr. Thatcher: Well, we have Congress independent living in the shadow of the larger unit.

Mr. Houston: But it does have the authority, desn't it, to revoke the certification if they become affiliated?

Mr. Thatcher: I suppose so. Certainly.

Mr. Houston: It could be done?

Mr. Thatcher: It could be done. A petition could be filed and the Board can do quite a few things. I think it could be done, yes.

Now, on the larger question of the right of supervisory employes to form and join unions and engage in collective bargaining, of course, the A. F. of L. subscribes fully and wholly with the principles announced by the Chairman in

the Maryland Dry Docks decision, and we will take every opportunity to urge and request that the Board adopt those principles at the earliest possible opportunity. We think that the right of any class of worker whether
85 it be a supervisory employe or an administrative employe or a plain production employe to form and join unions and engage in collective bargaining for their economic aid and protection which is too important and too fundamental a right for a Board by a broad general edict applicable to an entire class and without regard to the circumstances of each case to deny that right to any class no matter who they are, and without going into the merits of the controversy that has been outlined in the Maryland Dry Dock very well, we again say that we subscribe fully to those principles and that the July 1944 Federationist sets forth our further views on the question of supervisory employes. We refer the Board to that issue of July 1944 is the American Federationist. And we urge that the Board grant the unit requested in this case.

Mr. Reilly: I notice on the list of appearances that you put down A. F. of L. and then in front the United Technical Employes, was that you?

Mr. Thatcher: No. I appear for the entire A. F. of L.

Mr. Reilly: Oh, yes.

The Chairman: Now, while you are on your feet and you are well within your fifteen minutes, just one-third way, I would like to ask you to what extent foremen are members of the A. F. of L. organization and are covered by agreements in the building trades and shipping in the railway work and otherwise with what result from
86 the A. F. of L. point of view?

Mr. Thatcher: With what result what?

The Chairman: With what result from the A. F. of L. point of view. You represent the A. F. of L.

Mr. Thatcher: As you know, for many many years, in the printing trades, since 1890 and in many other industries in the building trades particularly, among the building trades unions foremen have been required to be members of the organization. These organizations, of course, hold subcontracts all over in many big industries. My personal experience has been—

The Chairman: They are covered by the agreement?

Mr. Thatcher: They are covered by the agreement, absolutely, and they bargained for it through the union. And our experience is it has been beneficial not only for the foremen involved and for the other union members but for the employer.

I have no doubt the Board has available a leading survey conducted by the Department which is two or three years old, with statistics on that question in which it does relate some early troubles that have been since ironed out and we certainly have found it highly beneficial. I think the problem is one which resolves itself. The employer has a perfect right to fire any foreman or supervisor who neglects his duties. If he neglects his duties to perform for the union he is neglecting his duties the same as
87 a person on a lathe neglects his duties, the boss has a perfect right to fire him. His rights are amply protected under the law. There is nothing in the National Labor Relations Act or in the common law or any other law which in any way which detracts from the right of the employer to discipline as he chooses for any dereliction in duties. So we say why all this worry and bother in the air when we have had practical experience in this problem for many years, why there should be this concern about conflict of duties.

Mr. Houston: From all your experience you haven't found any great division of loyalty between the foremen and the men, have you?

Mr. Thatcher: No. Not any more than between the production worker and the union. He has got a duty to management too. A production worker or a man on a lathe, he has got to perform his job too.

Mr. Houston: The management is amply protected there.

Mr. Thatcher: Amply protected. There is nothing in the National Labor Relations Act to detract from it in the slightest and we think that the right of a person to associate with other persons in the same category of fellow-workers is an important right, a fundamental right. In fact, we are urging very shortly that it is a constitutional right.

The Chairman: Why do you say "fundamental right"?

Mr. Thatcher: I mean a right, for instance, under
88 the Bill of Rights. I am not going to start an argument here on what we are going to argue before the Supreme Court next month. But that is what we are advancing and that has been held by the Supreme Court prorata anyway. It is a concomitant with the right of assemblage and speech, a fundamental right. If the Board desires we will supply them with our briefs in the state courts of these cases pending in the United States Supreme Court, as throwing light on the very fundamental nature of the right of persons of any category to assemble into labor organization. As a matter of fact, some of these states have passed laws forbidding supervisory employes to join unions and there is no doubt that they were prompted to a large extent by some of the decisions of this Board in recent years. As a matter of fact, the attorney generals in those states have relied very heavily on the decision of this Board in Maryland Drydock, to support that type of legislation and its blanket legislation prohibiting any type of supervisory employe without any definition of that term from becoming or joining labor union under a criminal penalty. I think that is going pretty far.

The Chairman: Does the A. F. of L. have any affiliation among the railway unions?

Mr. Thatcher: Oh, yes, a great number of them.

The Chairman: With foremen as members of the unit?

Mr. Thatcher: There are 42 unions. And again as
89 this labor survey shows, and, of course, it is the fact, almost all of these labor unions still take into membership the supervisory employes.

The Chairman: Are any of them made up entirely of supervisors?

Mr. Thatcher: I am not certain about that, Mr. Millis.

The Chairman: You will find that one or two of them are organizations of supervisors.

Mr. Thatcher: I don't know about that.

Mr. Reilly: Mr. Thatcher, is it your theory that they have statutory—well, is it a constitutional right to join unions in which there are subordinated as members such as the cases you say, in the building trades?

Mr. Thatcher: Well that is not involved in this case, of course, and I don't think we could decide it is involved here. But the position of the American Federation is that if those persons want to join organizations of non-supervisory employes as they have done for many many years that they should be permitted. The possibilities are that the thing will work itself out by itself. Self-interest will dictate that the union where there is a certain type of supervisory employe would not disrupt its ability to function and so on. That is just worked out as a practical matter very successfully, both for the union and for the welfare of the employer.

90 Mr. Reilly: Yet when you hear the counsel of the Machinists Union, one of them is spoken of,—the unit is spoken of in the printing trades and the building trades. We very rarely have any cases under this Act quite independently of the Labor Relations Act but all the big industrial units of the A. F. of L. which appear before this Board frequently and in which you have appeared as counsel, you haven't hesitated to file charges of company domination and even cases where an independent union admits foremen to membership.

Mr. Thatcher: That isn't the basis. That might be one of the elements, of course. That might be one of the elements for finding as you have found—

Mr. Reilly: This controversy doesn't deal at all with the supervisors whose duties are so negligible that they fall below the line that the Board—that the Maryland Drydock case which is the issue here today, dealt with a class of employes conceded to be supervisory, not just the man as a straw boss.

Mr. Thatcher: I appreciate the fact that it is again a matter of degree.

Mr. Reilly: Yes.

Mr. Thatcher: They really are foremen instead of lead men that should not in any way propagandize them. But it is something that can be determined in each case

91 by the Board and through the process of trial and error the unions will have to learn what the responsibilities and duties of those supervisory employes are

that are taken in. But it is a far better thing to work it out that way than to try to deny them any right of protection.

Mr. Houston: But where you by tradition have included the foremen, for instance in the printing trade—

Mr. Thatcher: The printing trades set the example.

Mr. Houston: By the same token that doesn't permit the management to use those supervisory foremen to discourage membership in the union?

Mr. Thatcher: Absolutely not, and this Board has been prompt of course in this and we have not objected.

The Chairman: Mr. Donner.

ORAL ARGUMENT OF MR. FRANK DONNER.

Mr. Donner: Gentlemen, my name is Frank Donner. I represent the C. I. O. The position of the C. I. O. with respect to the organizational rights of foremen and supervisory employes is that they are employes within the meaning of the Act and are fully entitled to all the benefits of the Act.

Now, the position of the employers in this case I think is made perfectly clear. The employers claim that they have a right to destroy unions of foremen, that they
92 have a right to discharge individuals who engage in union activity in behalf of unions.

Now, it seems to me that that position is condemned on the face of the Act by legislative history and by the court cases. It is very interesting to me that two of the first cases were the Fruehoff Trailer Case and the Associated Press case.

Now, the Fruehoff Trailer case involved a supervisory employe who was discharged for union activity. Now, no one even dreamed of raising the question of who was an employe within the meaning of the Act.

The Associated Press case is interesting because it echoes with all the arguments that have been made here about invading the management privilege of dividing the allegiance of the individual who joined the union and the Supreme Court there said, and that is in the Associated

Press case, that the weapon of discharge was still available to an employer who was confronted with an individual who refused to do his job as he was supposed to.

Now, in the court cases, every court case in which this issue has come up, the Skinner & Kennedy case, the Christian Board of Publication case, the holding has always been that supervisors are employes and entitled to the benefits of the Act.

Now, that point was raised very sharply in the re-
93 cently decided Jones & Laughlin case in the Sixth Circuit, which Mr. Iserman, who represents the Chrysler Corporation here today argued very vehemently to the court that Skinner & Kennedy wasn't good law, that supervisory employes were not entitled to the benefits of the Act.

Mr. Houston: Well, in the Ford case in which the challenge on supervisors being employes had not been upheld by the courts.

Mr. Donner: Now, if you look at the statute I think the statute is so clear that there is no room for argument. The statute says 'employe means any employe'. But suppose it were more ambiguous. Suppose a situation where there might be some doubt. Now, I don't think there is any doubt here because foremen were even employes at common law. But suppose there were some doubt, let's apply the tests that the Court said were appropriate in the Hearst case, in the Supreme Court.

They said: "Are these the kind of people that need collective bargaining? Are these the kind of people whose differences with their employer creates disturbances in interstate commerce." I think that if you view it from that point of view there is no doubt that these are those kind of people. They have organized a union. They have organized them precisely the same way that every employe organizes. And what is more the Congressional
94 prediction that denial of bargaining rights to these people will create disturbance have come true with a tragic accuracy. We have seen the situation in Curtiss-Wright. We have seen it in coal. We have seen it in oil.

Now, it seems to me that if this Board goes on and denies bargaining rights to these people you are giving a fearful hostage to industrial peace. You are saying: "Well, they may be employes but for certain purposes we are not going to protect commerce." Now, I think this Board has done its duty to protect commerce once it finds these people are employes.

Mr. Reilly: Mr. Donner. I grant the foremen's strikes were very serious in affecting war production and are probably outstanding examples of strikes which have arisen over Board decisions but that is the most protracted and bitter strikes haven't they resulted insofar as this hinges upon the Wagner Act resulted out of certifications of unions which the minority union refuses to take the decision and accept it?

Mr. Donner: Well, I am not sure that I know what you are getting at.

Mr. Reilly: Well, the question was the mere fact of a strike against a Board decision, since the statute gives this Board no process against unions, it doesn't necessarily mean that the decision is unsound, does it?

Mr. Donner: I think these strikes show that there is a fairly clear nexus between a denial of bargaining
95 rights and the resort to economic weapons. I think it can fairly be said that if there weren't a denial of bargaining rights that there would be less likelihood of a strike in other situations.

Mr. Reilly: I am drawing your attention to the cases in which the granting of the bargaining right to the majority brings about an equally serious and destructive strike by the minority which is more partial so far as the sinews of war are concerned.

Mr. Donner: Are you suggesting that there are other kinds of strikes and protests against the certification of foremen?

Mr. Reilly: I didn't have that particularly in mind. I merely was pointing out that the enforcement of the majority rule principle of act frequently brings about strikes by the shops with unions which have a preferred position.

Mr. Donner: Well, do you think that those strikes diminish or increase if the Board certified this union in this case or announce the rule that foremen were employes and were entitled to bargaining rights under the Act?

Mr. Houston: Who would strike under those circumstances?

Mr. Donner: I don't know.

Mr. Reilly: I am merely indicating that the mere fact that strikes result from the Board decision is not necessarily—

96 Mr. Donner: I agree with that but my point still is that there is a fairly clear nexus here.

Now, I want to make one other point which goes to the attitude of the C. I. O. in this matter. I think the Board is correct in viewing this as a problem of quarantining the foremen's union, of insulating it to a certain extent from rank and file contacts. But I do think, and the C. I. O.—I want to add parenthetically that we haven't any designs either aggressive or seductive toward the foremen's association. I have heard rumors that we are after them or that we have put the evil eye on them or something like that. Well, it is just not so.

Mr. Houston: Well, do you think that they can remain independent?

Mr. Donner: Well, this is the problem that we are worried about. We think that these unions should not be affiliated with internationals of production workers. We also think that it would be bad for the Board to impose an absolute autonomy rule which would prevent a union of foremen from affiliating at the top with the C. I. O. or the A. F. of L. and I will give my reasons for that presently. We are prepared to charter separate local industrial unions of foremen. We are prepared to lay down a policy that production unions, production internationals should not admit foremen, but we think that it would be bad

97 for this Board sitting in Washington to create the kind of legal compression that would force the existence of a new federation because we believe there is some likelihood, and we are afraid of it, that once you form a federation of that character it may then go over

in a body to either one of the two existing federations. And we think that the problem of insulating the foreman's union doesn't lead you necessarily that far that this Board in doing that will promote a basic kind of point of view in the American Labor Relations picture. It will create a new Federation of Labor Union, and we don't think that this case or this problem requires that fundamental or kind of treatment.

Now, we think that if you have that situation you may get more profound disturbances than you would if you let the thing go along naturally, that you might get a situation where you have got all A. F. of L. and a good many C. I. O. production workers or vice versa. In other words, we think that this strict autonomy rule might boomerang on the Board and produce certain disturbances. We don't think that it is necessary for this case.

Now, the solution which we propose is by no means a novel one. Since 1918 you have the Association of Supervisory Staffs and Engineering Technicians in Great Britain which is an autonomous union which is affiliated with the T. U. C., the Traders Union Congress, and that is the position we would like to see this Board adopt.

98 Mr. Reilly: Mr. Donner, I imagine from your argument you see a little difficulty in the foremen's cases, namely, the conflict between this notion of an absolute right of foremen to join any union and the reasoning of the Board in the 8-2 and 8-1 cases where we have held repeatedly that the mere presence of foremen holding office in those unions or even being active in them even without any—

Mr. Donner: I am well aware of the problem but I think that the Board is resourceful enough. I don't think that this is something that presents a head-on clash of two concepts. How many 8-2's have you had in the auto industry in the past two years? In the automobile industry.

Mr. Reilly: Well, there have been few largely because of the fact that the independent unions have been pretty well driven out of the field, have they not?

Mr. Donner: Well, but I don't think that it is wrong and over-mechanical to elevate the status of the supervisor to

the point where he is the exclusive vessel of management and has no rights for himself, because I do think that no matter at what rung you put him he still shares both characteristics.

Mr. Reilly: Well, I concede that that could be eliminated by, as you have pointed out, complete segregation between the Foremen's Organization and the other, but if you were going to conclude even informal treaties
99 of joint action between them, such as the one that Mr. Nelson described this morning, and in which both sides agree not to replace one another if one or the other strikes or if there is any mutual agreement about not crossing picket lines. Haven't you got possibly not as organic a unity as would have been created by their all being in one local, you have got just as much affiliation as you have, let's say, between two sovereign nations to form a military alliance during the period of a war.

Mr. Donner: That precise argument was made in the Jones & Laughlin case in the Fifth Circuit in which the employer argued that the A. F. of L. Masters, Mates & Pilots and the unlicensed seamen C. I. O. were a little too friendly, and so the fidelity of the Masters, Mates & Pilots to their duty was slowly being seeped away and undermined.

I think that a little unity and a little friendliness is no occasion for throwing out the bargaining rights of a whole group of people. We expect unions to work out working arrangements and we expect to see them do more and more of it. I mean, I don't see that—

Mr. Reilly: I am not thinking of their fraternizing at all. I am raising the very different question in this situation. Let's suppose that in one of those units an organizational strike—let's assume that that organizational strike is occurring in the production unit. Now,
100 won't the fact that the foremen, if they have such a treaty with the union trying to organize production workers,—won't the presence of the foremen who are throwing their weight against crossing the picket line or against strike-breaking in general have the same coercive effect upon the workers who look to these foremen for their bread and butter?

Mr. Donner: I think you can conjure up a lot of difficulties if you want to sit here and conjure.

Mr. Reilly: Isn't that a typical case, Mr. Donner?

Mr. Donner: No, I don't think so. Every time a group of employees seeks to gain organizational rights whether they are maintenance men or hospital (hostile) employees or what you will the specter of sympathetic action is always raised.

Now, I don't think it is the function of the Board to raise all these specters, and to conjure up the worst possible situation. Here are a group of employes who are entitled to bargaining rights. I think that the Board ought to try to create a situation in which they get it and in which they can exercise it to the fullest extent possible.

Mr. Reilly: Whether the foremen are organized or not the rank and file employes walk out on strike. How long would the plant operate?

Mr. Donner: Not long at all.

Now, to get back to your other point about sympathetic action and so on, this Board in the Plant Protection
101 cases consistently says: "We have confidence in the fidelity of the plant protection men to their duty. We will put them in a separate unit. Their bargaining problems are different. We think that that initial differentiation will serve as a measure of assurance that they will serve their own bargaining interests and not the interests of others." I think it is that kind of judgment that has to be made in a situation like this.

Mr. Reilly: We have never disestablished unions, have we, because guards belong to them?

Mr. Donner: Well, as I say, this is where I came in.

The Chairman: Just a question please. Isn't it possible for the employes to have a contract with the Foremen's Union or in the absence of that to establish rules which neutralize them?

Mr. Donner: Which neutralizes their civic action?

The Chairman: Yes.

Mr. Donner: I don't see why not.

The Chairman: That is part of their job, isn't it?

Mr. Donner: Yes.

Suppose the foremen—

Mr. Donner: That's right.

The Chairman: (continuing) —and not fellow workers and fellow fighters or fellow strikers—

Mr. Donner: Well, the Board, of course, has made
102 the very same observation upon plant production people.

The Chairman: Yes. Now, you mentioned them. What difference is there between the foremen and these guides from the point of view of the power of the Board and what it ought to do? You brought that up. I just wondered what you think about it.

Mr. Donner: Well, the Board has said this about the difference. The Board has contrasted the two and said that in the one case the power to discharge flows out of the facts reported by them rather than out of their status. Now, to me that is a difference that you can measure with a micrometer. I don't think there is very much difference.

The Chairman: Mr. Mahon.

ORAL ARGUMENT OF MR. MAHON.

Mr. Mahon: Gentlemen, Mahon is my name. I represent the Confederated Unions of America, a group of affiliated independent unions, and the Foremen's Association of America is not affiliated with us. It is our position that foremen are workers and entitled to the right to organize. We feel that the Board should establish and define their unit the same as they have and do establish other units.

We can see why we have heard these arguments many times why the company prefers to keep these people in that untenable position they are now in. They are denied
103 the rights that they would have if they had recognition as a bargaining unit and they do not have the privileges that management has. I think that must have been the cause of the economic action that was taken and I believe that speaks for itself. We believe that that is part of the Board's duties under the Act to define the unit and to certify these units after they define them to bargain for their members.

That is all I have to say.

The Chairman: Any questions, Gentlemen?

Mr. Reilly: No.

Mr. Houston: No.

The Chairman: Thank you, Mr. Mahon. Mr. Nelson. I don't know whether you have had a lot of time or not.

ORAL ARGUMENT BY MR. WALTER NELSON (resumed).

Mr. Nelson: Well, I will say what I have to say on two points and yield the floor then to the opposition, Mr. Chairman.

Now, in general, we came in talking about wages, working conditions and matters of economic interest to the foremen, and as I said this morning we have been confronted by a lot of conversation about what our duties and responsibilities are. In other words, in a way our opposition has ducked the issue by talking about things that are issues that we didn't really raise and that we don't think have any material relevance to the issue raised.

And this morning on one of those issues the question
104 came up and I am making a general discussion applicable to all of these foremen's cases, by applying the Packard record. And I understood the discussion to be one of the replacement either by the maintenance or production workers or the foremen of the other branch and that that resulted ultimately in a strike and I indicated my private opinion that I thought, of course, if the Foremen's Association is and we insist that it shall be a genuine labor organization, that it should adopt sound union principles with respect to replacement.

Now, if you carry that over into a discussion in which the employers have freely indulged themselves into the claim that the organization of the foremen will encourage work stoppages and strikes, that industrial strife will result, and then you ask the question,—what, in general, should be the attitude of the foremen as a branch of this discussion of the claim of divided loyalty when you have an entirely different consideration.

The specific answer can follow in either case. The second

case I did not talk about at all as far as anything I said this morning was concerned. I had in mind only the matter where one was asked to displace the other.

The record in the Packard case is perfectly clear on the issue. Wherever there is a strike, and we don't admit for a minute that the organization of foremen would tend to increase strikes of maintenance and production
105 workers, nor necessarily to increase strikes among foremen, though we are bound to admit and do admit that individual foremen don't conduct very widespread strikes all by themselves any more than anybody else, but we take it to be the policy of the Act expressly stated that it is better for men to get together in the defense of what their real and meritorious rights are than to take them individually and individually suffer injustice in detail. That's the theory of the Act; and again let me remind the Members of this Board that they come in and they talk about what? About production? No. They talk about strikes and let me submit this to the Board. It is perfectly possible and we think probable and provable that where men think enough of their rights to organize, by organizing of itself bring about strikes,—it did take place in Detroit in the Foremen's Organization. You may very well have the situation where a series of strikes will be accompanied by a rise in production. The things the Act is interested in also is production, and where men take their jobs seriously enough to organize and strike for their rights, you are likely to find a rising curve of production. And I challenge my brothers to show anything to the contrary in the short history of the Foremen's Association. Its organization has been attended on the one hand with an absolute refusal to recognize it, with the single exception of the Ford Motor Company, and by a rising curve of production. And if I can get this Board
106 to pay a little more attention to the word "production" than to the word "strike" we will be back again on the thing that people are interested in, and that the public has a legitimate interest in.

Mr. Reilly: Is there something in the record, some graphs or charts that—

Mr. Nelson: There are none, Mr. Reilly. I am sorry to say the companies are peculiarly in possession of this information, we are peculiarly not in possession of it in any collective form. That is, we could have produced foremen, as we did show in one instance in the Packard record, where the foremen themselves had reduced the cost of production from 100 units to 65, just of their own efforts; a saving of 35 units of production costs. There was no dispute on that. We happened to be in possession of that particular bit of proof.

The companies, by failing to show anything to the contrary, they being peculiarly in possession of that information showing on this record, have admitted that if they had made the showing if would have shown a constantly rising curve of production.

Mr. Houston: Well, in this particular case hasn't the company been cited a time or two or more?

Mr. Nelson: There is no doubt about that. We didn't—

Mr. Houston: For production?

107 Mr. Nelson: For production in the two and a half years, and they are, of course, peculiarly in possession of those records. We said so in the record. We said so in the argument here. And we have been organized two and a half years. It has got all the payments that a company of that kind can get. We freely concede they are entitled to do it because we don't get it, and we have been organized practically one hundred percent.

I believe there has been just one strike in that history in the Packard Company and that's an organization strike. In other words, had the company conceded organization, recognized and bargained with us as they originally agreed and started out to do, and for what reason they have been recalled, I think they should answer. Somebody changed this company's mind.

Mr. Houston: When was that?

Mr. Nelson: A couple of years ago, in 1943 in the spring, February, and they agreed,—we had all but three members,—we agreed on the exact classifications as I remarked to the Board this morning. Somebody reached out a hand and moved the Packard Company to say no. And they did.

The Chairman: How was that election arranged for?

Mr. Nelson: It was a consent election arranged for through the Regional Board.

108 We went into the office of the Board and the company sat down and agreed.

The Chairman: Our Board?

Mr. Nelson: Your Board, yes.

The Chairman: In Detroit?

Mr. Nelson: In Detroit, at Mr. Bowen's office.

The Chairman: How does one of those consent election agreements read?

Mr. Nelson: We agreed to the election and let the Board supervise.

The Chairman: For what purpose?

Mr. Nelson: For determining the collecting bargaining representative of the foremen of a certain grade in that factory, twelve general foremen being expressly excluded and the notes of Mr. Bowen's secretary shows it.

Mr. Houston: That is what you were speaking about this morning.

Mr. Nelson: That is exactly right.

The Chairman: With what assumption after the election?

Mr. Nelson: Representation and bargaining. It would be pointless to go through the trouble of an election unless they proposed to bargain with us and that was the express understanding. We agreed on classifications. We agreed on who should be allowed to vote and there certainly came a change with respect to general foremen and then

109 a complete change and a withdrawal from the agreement. And the election was held.

The Chairman: Was that before or after the election?

Mr. Nelson: The agreement was before the election.

The Chairman: No. I mean the change in attitude.

Mr. Nelson: The change in attitude came immediately before the election.

Now, the general attitude of foremen on this branch of the issue of the claim of divided loyalty. The record in the Packard case, and I cite that because it is symptomatic of the whole situation. There won't be any difference in principle no matter how far you go in mass production. These principles will apply.

Suppose the maintenance and production workers strike.

Now, aside from the matter of replacement of one or the other which we call in union parlance "scabbing" on each other. We needn't apply that harsh a term to it but it is taking from one rank to replace in another. Aside from that, just take a general strike situation. Suppose the foremen strike? What is expected of the maintenance and production worker? Nothing but neutrality. That's all. And that's all you get if the maintenance and production workers don't take the place of the foremen. That is all you have got, is neutrality. You have nothing more. You have nothing in the nature of a binding agreement or a
110 common mores or morals or anything of the kind. You have just got neutrality, cold-blooded, fishy neutrality. They just don't do anything for either side.

Suppose the maintenance and production workers strike, for a general reason, whatever it may be. What right has the employer? What may he expect? Neutrality. They go to the place. They go through their normal functions. They take neither side, a cold-blooded, fishy neutrality if you like. They just don't do anything but come back to work. Now it is perfectly obvious that physically speaking as Mr. Houston remarked,—if the production workers go out there isn't going to be much done in the plant. It happens to be conversely true too that considering the kind of material that are produced and the kind of operations that go on in these plants and the essential necessity of the foreman if he is gone very long, either they are not going to have very much go out or they are going to allow a lot of stuff to go out that they are going to have a lot of trouble getting back. It will come back loaded with trouble, so the practical effect is that pretty soon after the foreman is gone then there isn't much doing in the plant.

But the thing that the employer has a right to expect and the position the foremen take in general on the issue of strikes as has been exhibited in various detail in the Packard record is that they stand neutral. If the
111 employer wants the foremen back in the plant he is entitled to have them there. And the foremen will go back into the plant unless physically prohibited. Once in the plant, the foreman will perform his duties to the

full limit permissible without taking the place of the maintenance and production workers. That is all the employer is entitled to and he will get that as long as the Foremen's Association is in charge of that group of foremen. That is our settled principle in general in strikes, a cold, even-handed impartiality.

Mr. Houston: Can any union of foremen be independent and remain so?

Mr. Nelson: It certainly can. As a matter of fact, I would put it the other way. It is my impression that in the long run in mass production industry, it is obviously the view of the C. I. O. and many of the unions of the A. F. of L. that they can't long run a union containing both foremen and workmen. My judgment is that experience in mass production from now on will show that we have planted ourselves on that principle without any disposition to quarrel with those who have the other viewpoint for the time being. We will naturally let experience demonstrate who is right about that.

The C. I. O. early had the viewpoint that they couldn't accommodate themselves to foremen in the local union as the record in the Packard case shows, that Local 918, Mr. Lewis dropped it in settling the Chrysler strike
112 because they couldn't get along, first with the men in the same locals and they couldn't get along with them even in the C. I. O. So they dropped them cold. Experience taught them that the foremen belonged in a separate organization, at least, in a production plant like the Packard plant. And it was one of a large number of plants in that Local 918. And so I think that experience will show that. I say to the Members of the Board that we are philosophers enough that we are held up here as very successful propagandists, superlative propagandists which flattered us beyond anything deserved. But we are something of philosophers too. We will yield to experience. If we have selected a principle that turns out not to be sound because we have planted ourselves on the one proposition that independent foremen organizations can render a better service, taking into account the employer, the public, the maintenance and production worker and any other type that we belive we will have to yield that

belief to the demonstrations of experience, of course, to modify it.

Mr. Houston: May I ask a question?

Mr. Nelson: Yes, sir.

Mr. Houston: What has been the increase of percentage of your organization since the decision in Maryland Drydock?

Mr. Nelson: Better than double.

Mr. Houston: When at that time the average foreman over the country had no reason to believe that he
113 would ever be allowed to bargain collectively?

Mr. Nelson: None whatever. I would say that we have taken in 20,000 members or better since that day on a purely voluntary basis.

Mr. Houston: Why did they join your organization?

Mr. Nelson: Because of the service we hoped to render them.

Mr. Houston: Because they had a problem that they needed working on.

Mr. Nelson: They had problems that needed solution.

Now, I think I have given the Board some idea about this divided loyalty business. I want to give the Board one other idea about it.

On the point that we came before this Board upon we don't owe the employer any loyalty. When we come in dealing with the employer as to our wages and hours and conditions of labor we are dealing at arm's length just like anybody else in bargaining for an economic commodity and to that extent our labor and our services are an economic commodity. On the issues we raise by our petition here the issue of loyalty has nothing to do with. On how much money we are going to get we are either not economic or adversary of the employer. The only issues that we present to this Board and present to this employer,—
the issue of fiduciary relations is entirely out. It
114 hasn't got anything to do with it. We are offering our skill and labor getting what we can. They are on their own getting it out of us for as little as they can possibly pay, to put it in its broadest sense. So the issue that we present doesn't present the issue of loyalty at all. They merely obfuscate things and cloud the issue by yap-

ping around about loyalty and I put it advisedly because I am tired of hearing it.

Mr. Houston: Well, wasn't that exactly the position I stated this morning that the foremen are part of management and owe their first loyalty to management. When it comes to wages, hours and working conditions that is their own problem.

Mr. Nelson: That is right. You stated it very well and very briefly only I want to point out that so much of the time of the Board that is taken by this talk about divided loyalty and the dangers it presents have nothing to do with the problem. We owe, as this record in the Packard case shows,—take this particular issue,—take that man Mayday, a member of the Executive Board of Chapter No. 5, took to drink. Before the employer did anything about it his fellow-foreman took him in and said: "Look, Mr. Mayday, you can't hold your job as a foreman at Packards and do what you are doing. You had better straighten up." The Members of the Executive Board took him to a brotherly talk and said the same thing to him. "Straighten up." And for reasons that were personal to Mr.
115 Mayday he went on his way, sitting on the Board of Chapter No. 5.

Finally it got so bad that somebody in the supervisory force reported, recommended his discharge, and he didn't even go to the Board to get any help. He was so confident that the Members of the Executive Board of Chapter No. 5 were conscious of their fidelity and their duty to the employer to the extent that it wouldn't do him a bit of good. They had already told him that he was beyond bounds and couldn't expect the employer to stand by him and they wouldn't. So he was discharged. He withdrew from his office in the Chapter and the matter was never stated even as a grievance to the employer. And that is only illustrative of the type of loyalty that these men in the Foremen's Association expressed in Chapter No. 5 under the most aggravating kind of circumstances where they had an employer who had broken his word with him, gone back on the express agreement before public officers, —they had every reason in the world to indulge their personal loyalty and their organizational loyalty in the case

of Mayday and similar cases and they refrained very carefully from doing it at an express and an outstanding manner, that feeling of loyalty to the employer that they feel that their position and their pay requires them to yield to him where their own interests are involved.

But when you come to pay, terms, working conditions, they don't owe the employer anything. The owe him
116 fair treatment in striking a fair bargain and when they have extended that treatment to him, not in a fiduciary capacity but in the capacity of men bargaining on either side of the table they have done everything that they should be asked to do.

Mr. Houston: May I ask you question?

Mr. Nelson: Yes, sir.

Mr. Houston: Have you had any connection or any observation, at least, where guard units are in a plant and belong to the same plant union? Has there been any division of loyalty between the guards and between the company. Have they become derelict in their duty since becoming organized?

Mr. Nelson: I have heard of a number of cases involving guard representation and I have been as you know in many many days of hearings where complaints against foremen or somebody were originated by guards and I must answer to this effect, that neither personally nor in a public hearing have I ever heard of an employer complain of a lack of fidelity on the part of a guard. I have never heard of such a case yet, after the guards were organized and represented. I have yet to hear of such a case either personally or in a public hearing.

Mr. Reilly: Mr. Nelson, since you have argued here on other cases I take it that you are quite familiar with it, of course?

Mr. Nelson: Somewhat.

117 Mr. Reilly: Yes. Now, would this be a fair summary of the contents that most of these grievances of foremen such as the lack of overtime and lack of any differential between the subordinates have been largely overcome in recent years but that the major difficulty still remains is the foreman's feeling of insecurity with regard to layoff and discharge during the period in which indus-

try is expected to contract after the war. Would you say that was a fair commentary on the substantive grievances of foremen?

Mr. Nelson: Well, on the substantive grievances of foremen before that Board, may I make just a brief statement, and I think it will answer your question, Mr. Reilly?

Mr. Reilly: Yes.

Mr. Nelson: Those grievances arose, I think, in every case a year or more before the hearing. The employers got around to those grievances. In the course of a year you would certainly expect them to under the fire of the Foremen's Association as we frankly admit double-barrelled before every board we could find. And naturally, they didn't wait until Professor Schlicter and the rest of them got around to those grievances. They did largely correct them. That is true. They should, I think, in over a year. And another observation in that connection. Those grievances were not presented to the War Labor Board for the purpose of exhibiting their merits at all.

118 Mr. Reilly: They were just illustrative—

Mr. Nelson: They were illustrative that there were grievances and of the nature of the grievances that originate among foremen. They were neglected. We made no effort whatever to try any one of them out to a final conclusion.

Now, when the employers came in it was making a public record and they reacted perfectly naturally by showing that those grievances were cleared up, or that the men involved didn't care to press them or something of that sort, and I think that was so.

There was enough, however, in the record to indicate what the nature of foremen's grievances was and obviously there was enough to do so because that highly educated and experienced panel reported the grievance machinery should be established. That was our point. There was no need to unnecessarily besmirch employers with some small item or something or make them feel badly about it. We had never adopted that attitude and we hope we will never be forced to. It is just injuring the employer because we happen to be on the other side. That is not our attitnde here. It is not our attitude before the War Labor Board

and we hope to be spared ever having to adopt in any case.

Mr. Houston: I just want to ask one question?

Mr. Nelson: Yes, sir.

Mr. Houston: You have been organized at Packard
119 for two and a half years.

Mr. Nelson: That is right.

Mr. Houston: What difference in the kind of an organization would you have if you were certified by this Board? What would be the difference?

Mr. Nelson: It would continue as it has been largely.

Mr. Houston: There would be no change?

Mr. Nelson: In the organization or after a change. The company would recognize it and deal with it.

Mr. Houston: Well, I know,—I understand that. But in the type of organization build-up would there be any change in that from the way it is today and the way it would be under certification of this Board?

Mr. Nelson: Well, the thing itself would be just the same foremen in the same chapter with the same officers and they would have an agreement to go by and instead of being in a situation—

Mr. Houston: I understand that, that they would deal with you?

Mr. Nelson: That's right, that's right.

Mr. Houston: That would be the only difference?

Mr. Nelson: I think it would be, but it would make a difference more than that. It is the difference between legitimacy and illegitimacy, which is pretty substantial, mentally speaking, I think.

120 It would make a difference to that extent in the organization. As it is we are not recognized as being proper parents. The Board has given us a rather smudgy record in the Maryland Drydock case, and we would like to clear that record.

I think I can answer it this way: The organization would be the same. The attitude of both parties would I think be very quickly changed, and I think we could prove that we measure up to our responsibilities in that just as they did spontaneously in the Mayday case and in a number of other similar cases.

Mr. Houston: In that Maryland Drydock decision did they again refuse or have you approached them since February 1943?

Mr. Nelson: Well, I understand that Mr. Turnbull, Mr. Traen and Mr. Wilkins and the Board have been again and again and again to Mr. Christopher with a hope that they might negotiate either on large matters or small ones.

Mr. Houston: Did they take the attitude that they did not have to because of the Maryland Drydock decision?

Mr. Nelson: That is their position. There are a lot of them standing on that platform. The poor old Maryland Drydock must be pretty well worn down by now. It has been stood on by some pretty heavy people.

Mr. Houston: They could have voluntarily bargained had they wanted to.

Mr. Nelson: They could. They could. We had the
121 feeling that if it were left alone it would. We want to say that for the company.

Mr. Houston: You mean that they are under the shadow of someone else?

Mr. Nelson: That is right. That is why they know all about one company working in the shadow of a larger organization. They are experts on that.

Mr. Houston: Somebody is liable to take them over.

Mr. Nelson: Somebody has taken them over and so they think that they are as we are as weak as they are and I am afraid they are mistaken.

If there are any further questions?

The Chairman: You made one or two statements I want to follow up. I know this circular report in part. I haven't read all of it. But I have been interested in the chronology of things which is not brought out there very specifically. Am I to infer from what you said that these things got cleared up before Schlicter got around but after the foremen organized?

Mr. Nelson: That is right. In other words, to clear it up the motive is the Foreman's Association. The opportunity to clear it up arose after the grievances arose and before they were heard by the Special Panel.

The Chairman: Now, another question. The War Labor

Board set up this committee to deal with grievance
122 machinery. It had nothing to do with the question of representation?

Mr. Nelson: Under the law it is their view that they could not.

The Chairman: Unless there were specific instructions.

Mr. Nelson: And the instructions contained that limitation.

The Chairman: Now, I want to ask you this question. Whether the foremen are entered at $16.00 a day or eight hours, six days a week, seniority rights and that sort of thing, given by anybody, just anybody, do they have an interest in talking about those things and helping to divide on them?

Mr. Nelson: They desire to be heard on whatever it is, whether it is $6.00 a day or $16.00 a day. They want to be heard on it.

The Chairman: Well, do they want to handle the decision?

Mr. Nelson: Do they what?

The Chairman: Do they want to help make the decision?

Mr. Nelson: They want to bargain for it.

The Chairman: Well, I'm an American citizen.

Mr. Nelson: Yes.

The Chairman: And I was brought up to feel that I should vote. I like to vote. And I paid a price on that privilege. Now, the foreman pays a price on this participation or is it just fish and beans?

123 Mr. Nelson: I think it is very important that they be heard on it. I went to considerable trouble to cite in detail Mr. Dwyer's testimony in this record in the Packard case, where he, after, I think, 25 or 30 years of being a foreman, when they were ready to go into the war program they fired a lot of these foremen including Mr. Wilkins after 35 years of foremanship, without any complaint against him at all. And they just called him in and said, in effect, "you're done." That was after 25 or 30 years of foremanship. When a man has got along in years he can't quite do everything he previously could and in the one case, in Mr. Wilkins case, he went out and got back as a foreman. Mr. Dwyer's case—Mr. Dwyer pre-

ferred the security of the C. I. O. and the chance to sit across the table and talk to them about what he was to get going back as a foreman after he had grown old.

Mr. Houston: Well, that is what the Chairman is speaking about.

Mr. Nelson: That's right.

Mr. Houston: Did the foreman have a voice in these things?

Mr. Nelson: I think he should have. In other words, if it is a bargain for my labor why should the company say what I am going to do it for. Why shouldn't I be heard to say that I think it is worth so much?

124 Now, that's the American scheme as I understand it.

The Chairman: Was that important as it appeared, that's what I want answered?

Mr. Nelson: It was very important to the foreman. And it is very important to his morale.

You see, he is in charge of other men and he will be respected somewhat in accordance with what he gets and the position he occupies and so on. Why should an ordinary worker pay much attention to him if the company doesn't do so. If he hasn't enough individuality about him to be respected enough by the company for the company to sit down and talk to him: why should the worker have any respect for him. The company's respect for him will be transferred to the workers?

The Chairman: Mr. Kunkle, you have been allowed ten minutes.

ORAL ARGUMENT OF B. D. KUNKLE.

Mr. Kunkle: Mr. Chairman and Gentlemen of the Board, my name is B. D. Kunkle, and I am a vice president and group executive of General Motors Corporation, on this day on behalf of General Motors Corporation, representing 115 plants with 400,000 employes.

I appreciate the opportunity that your Board granted me to appear before you today. I am here to present the views of the management of General Motors on the extremely important matter of segments of manage-

125 ment being legally required to collectively bargain with another segment of management. I feel I am

qualified to testify before you today without prejudice. Because of my industrial experience it has been my privilege to serve in all the capacities of management starting with that of a labor foreman of the Pennsylvania Steel Company when I was about 18 years of age.

In the years that have intervened I have held responsibilities of supervision, ranging through foreman, general foreman, supervisor and plant superintendent and organizations outside of General Motors prior to my association with them.

Since joining the General Motors organization in 1925 I have served successively as the supervisor of the Remy plant of Anderson, Indiana, as Plant Superintendent of the Frigidaire Division and have been a general manager for five years of the Delco Products Division at Dayton, Ohio.

In General Motors, foremen are a part of management. This I know from my own personal knowledge. This fact is not an accident. In the automotive industry and in General Motors foremen are as definitely a part of management as any other unit of management from the president down. The difference is only a matter of relative responsibility.

Approximately twenty-five years ago the extreme importance of the foreman to our organization was recognized. It was in 1920 when General Motors developed an executive training program that would through
126 study and conference better qualify the foreman to carry out his responsibilities, not only to General Motors but also to employes working under his supervision. This program was open to all management representatives from the foreman to the president. It afforded the foremen the opportunity to learn the principles of organization and management as applied to his particular work in General Motors. It gave the foreman an overall understanding of the management of industry, the functions of other departments and his managerial relationships to them. It brought to him the basic economic factors involved in the successful management of industrial enterprise.

These programs are being constantly kept up to date with the current developments of both legal responsibilities

of foremen as well as new ideas of management as they are developed.

During this entire period from 1920 to the present date there has been no departure in General Motors from the principle that foremen are management in every sense of the word. Just as the general manager is the highest authority in the enterprise so the foreman is the highest authority in his department. He has been invested with the authority of management. The men in the shops look to him as the representative of management. They get their instructions from him. He carried out the
127 plans and policies of management as they relate to his department.

Mr. Houston: Does he have any voice in administering policy?

Mr. Kunkle: He has if it relates to the work that is outlined for him to do.

Mr. Houston: In other words, he is given a blueprint of the job to do and he carries it out?

Mr. Kunkle: Yes, the same as all the rest of us have. The matter of restrictions in function is not limited to foremanship. That applies to all of us. In any industrial organization including the president.

Mr. Houston: And including the lowest workers?

Mr. Kunkle: Absolutely.

The Chairman: As I recall Mr. Kunkle,—though I am not very familiar with General Motors,—you have a gentlemen's agreement serving 115 plants or some such number and then a given plant can have a special supplementary agreement. There are some of those.

Mr. Kunkle: There are certain things in each plant that are negotiated by that plant.

The Chairman: Yes. Now, the question I want to ask you is who negotiates on the management side in those cases?

Mr. Kunkle: Usually management's committee.

The Chairman: Consisting of—

Mr. Kunkle: Well, there is no specific set group for
128 that. There is usually somebody from personnel, somebody from management and supervision of costs.

The Chairman: It would be the superintendent?

Mr. Kunkle: It might be the superintendent. It might be a foreman. There might be particular cases that come up in connection with grievances and the likes of that.

The Chairman: Yes. I was thinking about these supplementary agreements.

Mr. Kunkle: Well those supplemental agreements would be negotiated largely by your personnel and your plant management group.

The Chairman: And the plant management group would embrace whom? Would it embrace foremen, general foremen or just whom?

Mr. Kunkle: In some cases they do embrace foremen.

Of course, if the contract is entered into that's the policy determination.

Mr. Kunkle: Yes, in many cases those have to do with classification, the labor classification and rates, and the foreman is always called in when those are handled in the department which he is operating.

The Chairman: Of course, that is rate settlement.

Mr. Kunkle: That is not necessarily rate settlement, that is negotiating rates according to job.

The Chairman: I should think those agreements we
129 will run, we will say, for a year and which are supplementary to the general contract which used to be contained in the Blue Book.

Mr. Kunkle: Well, I think the general contract is pretty complete now, Mr. Chairman.

The Chairman: Yes, all those things have been washed out.

Mr. Kunkle: Except as I say. There are these other things like classification in work because it is different in different plants and the rates that relate to classifications are negotiated at individual plants.

The Chairman: And that happens most any time.

Mr. Kunkle: That is right.

The Chairman: It doesn't take a bargain day to do that.

Mr. Kunkle: No. It usually happens, however, early in the period in which the year of the contract carries through.

The Chairman: With changes in rates and so forth.

Mr. Kunkle: That's right, as jobs change and this operations change that requires negotiation for a new classification.

The Chairman: Thank you.

Mr. Kunkle: When a workman accepts promotion to a foreman he is recognized as a part of management, not only by his employer and himself but also by the workers under his supervision. In effect, when he accepts
130 this appointment as a foreman his status as a worker gives way to his responsibility as a part of management. Due to the authority and responsibilities vested in the foreman in General Motors and the position this places him in as an employer under the National Labor Relations Act it is impossible for the foreman to be in the dual position as an employe and an employer.

Since the corporation is held responsible for foremen's conduct it follows that the corporation not only has the right but the duty when in its judgment the foreman is not properly fulfilling his managerial responsibility to sever that relationship or withdraw that managerial authority that has been delegated to him.

In General Motors foremen are managers of the departments in which the employes perform work under their supervision. They direct workmen in making work assignments. They reassign employes as the need arises. They initiate merit wage increases and promotion of employes. They are responsible for the efficiency of the employes under their direction. In the course of these managerial duties they are charged with the responsibility of maintaining discipline among the employes under their direction.

The Chairman: May I ask a question please?

You talk about the merit increases and so on; now are those things made with the union representatives or
131 independent of the union representatives?

Mr. Kunkle: As I explained a few minutes ago, we have rate ranges that apply to given classifications of work.

Now, as a workman progresses in his ability the foreman promotes when he thinks the time is ripe within the period

of time, sometimes immediately, the rate increase that may apply in his case.

The Chairman: The rate has been fixed already.

Mr. Kunkle: That rate has been fixed by negotiations.

The Chairman: And then he decides when the man goes into that class?

Mr. Kunkle: That is right.

The Chairman: Now, may that become a grievance?

Mr. Kunkle: It could, yes. That is, if the man feels that he is qualified and the rate had not been advanced it could become a grievance with him to be brought up for consideration.

The Chairman: Well, suppose that you have a limited number of jobs to fill could some man not nominated by the foreman contest that,—grieve over it as it is sometimes said?

Mr. Kunkle: Of course, in line with the agreement you consider the man's ability.

The Chairman: Yes, I know. If the foreman says Al's the man for it and Tom thinks for some reason or
132 other under the agreement he has more merit can he make a grievance of that and must that be disposed of before the foreman's decision.

Mr. Kunkle: He has the right of way. As far as having somebody grieve over it I have come to this conclusion in industry that you never say yes to one fellow without saying no to another.

Mr. Houston: Well, do you think that these foremen would neglect these responsibilities you point out simply because he was permitted to organize and bargain collectively for himself?

Mr. Kunkle: I am not saying that he would, and neglect his responsibility.

Mr. Houston: Well, you are inferring that.

Mr. Kunkle: No, I am saying that so far as his responsibilities as they relate to management functions we would question whether or not if he is affiliated with a late union whether his loyalty to the union would supersede his loyalty to management.

Mr. Houston: Yes, I know. But that is speculative. In

case he neglected his duty you would have the right to discharge him.

Mr. Kunkle: That's right. But as far as being speculative is concerned I think there is evidence that it is more than speculative, it is rather factual.

133 The Chairman: May I ask a question bearing on that?

You have got tens of thousands of people who belong to the C. I. O. in the different plants?

Mr. Kunkle: That is right.

The Chairman: Now, I presume the C. I. O. is not a perfect organization and that some of its members don't go bad, get worsted. Do you have any difficulty in getting rid of those fellows?

Mr. Kunkle: We do some times.

The Chairman: You haven't seen the point. You have the right to fire them.

Mr. Kunkle: You have the right to discharge them if they have been guilty of things that—

The Chairman: And then union has a right to file a grievance and if it doesn't dispose of the grievance it would go to the umpire, I presume.

Mr. Kunkle: You may discharge or suspend.

The Chairman: Yes.

Mr. Kunkle: If there is any question about it the man is suspended.

The Chairman: But you do have such problems with the rank and file.

Mr. Kunkle: That is right.

Mr. Reilly: When you are dealing with a person whose duties imply some latitude in judgment in the plac-

134 ing of other employes, inasmuch as there are difficulties in his performance with a greater degree of accuracy as the lower ranking employes whose performance is measured pretty much by piece rates—

Mr. Kunkle: When you are dealing with intangible things it is always more difficult.

Mr. Reilly: So that's the reason that problem of loyalty arises.

Mr. Kunkle: Right. The General Motors foremen are

managers of the departments in which the employes perform work under their supervision. In the course of these managerial duties they are charged with responsibilities for maintaining discipline among the employes under their direction. They are empowered to take appropriate disciplinary action in the event of the violation of shop rules and union agreements and other improper conduct for employes. Under all of our union agreements they are the first point of management contact. In practically all cases they make the first management decision in grievances. It is only in cases involving issues beyond the jurisdiction of an individual foreman where the foreman is unable to make a decision.

In May 1943 the Board decided a very important case now known as the Maryland Drydock decision. That is a name that we have gotten familiar with here today
135 quite extensively. I will not quote from his decision. Nevertheless, I do want to call the Board's attention to his decision involving one of the General Motors divisions. I refer to the Detroit Diesel Engine Division. The language in that decision reveals very clearly that the opinion of the majority of the Board in the Maryland Drydock case was not to be disturbed or shaken though the union seeking to represent management employes might be independent and thus associated with the labor organization bargaining for the rank and file employes. The majority of the Board in the General Motors case said: "It is urged that the doctrine established in the Maryland Drydock case should be limited to the fact situation therein presented and that the instant case be differentiated on the ground that the union seeking to represent the supervisory employes is an independent labor organization not affiliated with the union which represents the production and maintenance employes. We have given careful consideration to this contention but are not persuaded that the factors militating against the establishment of units of supervisory employes set forth in our decision in the Maryland Drydock case are obviated by the circumstances that the union seeking to represent such employes is an independent, unaffiliated union."

The Maryland Drydock and our Detroit Diesel Engine Division decisions today stand as the law governing representation rights of foremen under the Wagner Act. Those decisions represent among other things a public announcement and recognition that supervisory employes are a part of management, a fact which General Motors has recognized and supported for over twenty-five years.

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Foremen in General Motors today are the first line officers of management.

Mr. Houston: First line officers of management?

Mr. Kunkle: Yes, sir.

Mr. Houston: What do you mean by that?

Mr. Kunkle: At the break between what has been chosen to be established—

Mr. Houston: Managerial hierarchy?

Mr. Kunkle: Well, you can call it hierarchy if you like. They are probably in that class.

Mr. Houston: The company doesn't set the policy. It couldn't be the highest.

Mr. Kunkle: So far as the responsibilities are concerned it necessarily follows that the responsibility of any individual in any industrial organization are circumscribed for the area in which he operates.

As far as I am concerned, listening to the review here today, I have been wondering if I am the same guy as I was when I was a foreman. And I believe I am. I don't think I have changed a bit. And I am the same guy and have the same feeling for those boys down there that I ever did.

137

Mr. Houston: Your position is that the foremen are the first line of management?

Mr. Kunkle: Yes, sir.

In the event that this Board should through any action or decisions sustain the position taken by the Foremen's Union which is pursued by them or necessarily create conditions in the plant which will be harmful to General Motors and its employes and to the nation in the war effort. If General Motors is to be bound by acts of its foremen under the National Labor Relations Act by virtue

of their position as foremen then General Motors must necessarily circumscribe the duties of foremen and by virtue of affiliation with unions and in participation of union activity would otherwise enlist General Motors in violations of the law.

This is not merely the prerogative of General Motors. It is the legal duty of General Motors. General Motors did not permit nor can it be supposed that the law requires its foremen to serve in conflicting capacities and thus attempt to serve two masters.

The foremen could not continue to exercise their present authority and responsibility and General Motors management would have to be reorganized in this respect. The effect of such a reorganization of managerial duties would be far-reaching. It would require the transfer of
138 many if not all of the first line responsibilities of management from foremen to a higher unit of supervision to a new inexperienced group who would have to be trained to take over these responsibilities.

This would remove management from close contact with the everyday problems of the workers. The entire General Motors organization would be affected. Problems and trouble incident to such a reorganization of duty cannot be readily comprehended or appraised. The status of foremen would thus be reduced since important managerial functions which affect employes would have to be transferred to others.

Mr. Houston: You don't claim, do you, that mere membership in a union is prohibited to a foreman?

Mr. Kunkle: We don't claim anything. The foreman has a right to do as he chooses as far as that is concerned but as far as the delegation of responsibilities is concerned, if there is going to be the differentiation between the organization employe and management then the function necessarily must stay with management. They are designated there.

Mr. Houston: In other words, if the foreman organized he would be discharged?

Mr. Kunkle: Absolutely not.

Mr. Houston: Well, you just got through saying you would replace them.

Mr. Kunkle: No.

139 Mr. Houston: With inexperienced people or somebody higher up.

Mr. Kunkle: I didn't say he would have to be replaced. I said there were certain functions that somebody would have to be called on to perform.

Mr. Houston: Certain functions?

Mr. Kunkle: Yes, sir.

Mr. Houston: What are those certain functions?

Mr. Kunkle: They are the things that have to do with management relations, the carrying out of contracts and that sort of thing, as they relate to employes.

Mr. Houston: Does the foreman have anything to do with those contracts today?

Mr. Kunkle: He does.

Mr. Houston: What for?

Mr. Kunkle: He is the first step, as I said a few minutes ago, in the entire procedure.

Mr. Houston: Is he called in and negotiated with on contracts?

Mr. Kunkle: He is consulted as to things which might relate to his particular sphere of activity that relate to the contract.

Mr. Houston: In other words, he is given a blue print that he takes out to his division and is told: "That's your responsibility today to get that work out." Isn't

140 that about the extent of the contract he enters into?

Mr. Kunkle: No, sir. If a man has the responsibility of assigning men to work to see they carry that work out and also have to do with the quality and performance and discipline in the Department. There are a lot of functions in there that are not in any blue print. That's a matter of the management of the department and that is what he is charged with.

Mr. Houston: Well, if he is organized independently, don't you think that would correct any evil that might exist of domination of one union over another?

Mr. Kunkle: Not if I am to judge from some of the

things that were brought out in testimony this morning, because there is no reason to believe that if on certain points there can be agreement between unions they can't be carried farther on other points. There is nothing prescribing a limitation there.

Mr. Houston: Do you mean secret agreements, or otherwise?

Mr. Kunkle: They can be secret or otherwise.

Mr. Houston: How are you going to stop that whether they are organized or not?

Mr. Kunkle: Well, as far as the functions are concerned of the foremen if he is a part of the management responsibility it is our duty in our supervision progressive
141 program to see that things are not done, of course, that are against the best interests of the operation to be chargeable among the people that are working for it.

Mr. Houston: You believe then that the operator if he were organized wouldn't carry out those functions? Isn't that your statement boiled down?

Mr. Kunkle: That's exactly what I questioned.

The Chairman: Are you almost through?

Mr. Kunkle: Yes, sir.

Since the foremen could no longer possess the managerial authority and responsibility which now distinguishes him from workmen who are already included within the bargaining units of the workmen, it might be argued that where ineffective leaders, who by decision of the National Labor Relations Board are already included in certified bargaining units which would immediately give rise to jurisdictional disputes between the unions involved.

I sincerely hope the decisions of this Board which have defined the status of foremen and which are fundamentally sound will not now be modified or reversed. This Board has given responsibilities in the proper determination of the matter before it and the consequences involved. Thank you.

Chairman: Thank you, Mr. Kunkle. Mr. Iserman.

ORAL ARGUMENT OF MR. T. R. ISERMAN.

Mr. Iserman: Gentlemen, my name is T. R. Iserman.

142 I am here at the request of Mr. Herman L. Weckler, himself, to present a statement to the Board in person.

Mr. Weckler asked me to present his statement. The first part of it concerns Mr. Weckler's experience in industry. He started as a youngster in a shop opened by his father. He attended the University of Pittsburgh and studied to become a mechanical engineer. Thereafter he worked for five companies in production. He was a draftsman, a designer and assistant superintendent of motor power, a shop engineer, mechanical superintendent in the Buick Motor Company, plant engineer, mechanical superintendent, master mechanic, supervisor of paints and general manager of Buick. Then he went to the staff of P. C. Keller; now president, then general manager of Chrysler Corporation. He was director of industrial relations, he became vice president and general manager of the DeSoto Division of Chrysler. In 1937 he became a vice president of Chrysler Corporation in charge of industrial relations and now he is the vice president, a member of the Board of Directors of the corporation.

I will quote from Mr. Weckler's statement as follows: "When Chrysler corporation at the order of the government ceased making automobiles in February 1942 it had about 60,000 employes in its shops. At the present time on war production it has about 95,000 employees in its shops.

143 At the time it ceased making automobiles Chrysler was the second largest maker of automobiles. It now makes a large variety of material for war, including medium and large tanks, 40 millimeter anti-aircraft cannon, engines for B-29 super-bombers, pressure cabins and other parts for those bombers, wings and landing gears for other planes and many other products.

The corporation has completed contracts for 3,000,000,000 rounds of small arms ammunition, large numbers of Sperry gyroscopic compasses and Radar mounts.

Of these various products Chrysler has been a leading

manufacturer or the leading manufacturer. We believe that Chrysler is one of the leaders in applying the methods of mass production, as we prefer to call it, engineered producing. We have a highly developed engineering department equipped with advanced engineering and scientific laboratories. It develops and designs the products that we make and also facilities for making them by our advanced progressive methods.

We have also highly developed methods of planning, of tooling our plans with special machinery for the particular product we are to make, of purchasing and following up and expediting the flow of materials into our plant and of integrating the making of interchangeable parts of our products and routing them to the assembly line for
144 assembling and delivering.

We have in each plant a plant manager and under him works managers, master mechanics, and superintendents. These are so-called higher management. The link between these higher officials and engineered producing and the 60,000 employes that were in our automobile plant and the 95,000 shop employes who are in our plants for making war material, other general foremen and foremen.

Fifty thousand people living in Detroit and various other cities in which Chrysler has plants cannot merely as citizens and residents left to themselves make automobiles. Nor could 95,000 living in Detroit, Chicago and other places where Chrysler has plants, as citizens and residents make tanks or anti-aircraft guns or engines for B-29 super-bombers. It is not until these people come to the plant that they can make things. When they come to the plants, as anybody knows who have seen a change of shift, they are merely so many thousand people, to change from a crowd of citizens to becoming makers of complicated things that are automobiles or tanks and other materials for war. They must go to the right place in the plant, to the machines, to the piles of material, to the trucks for moving the material from the piles to the machines and for moving the pieces from machine to machine according to the process of manufacture. But even

coming into the plants and going to the right places is not enough.

145 They need the direction of agents of management who have the schedules, the routing sheets, the blue prints, the knowledge of how the men and machines must be arranged to get out the product. These are the general foremen and the foremen. They are not representatives of shop employes. It is not the shop employes who have designed the product or the methods of making it or who ever take the contracts for delivering the output. It is the management that has done all this. It is the representatives of management who must impart to the employe the knowledge of what they are to do in order to carry out the plans and how they are to do it.

Besides showing the shop people what they are to do and how they are to do it these general foremen and foremen on behalf of management must see that the shop people do what they are supposed to, that they keep at work, that they do not waste their time in gossip or smoking cigarettes, that they make what the plans call for and not pieces that are too small or too large or otherwise not according to specifications.

There is no other setup at the present time in American manufacture of communicating the purposes and plans of management for making output to the people in the shops who do the work that the Census calls 'the value added by manufacture' except the general foreman or the foreman.

146 I speak as a manufacturer and not as a lawyer. The lawyers have presented to you the legal argument. As a manufacturer I say to you Gentlemen that if you exercised your authority to realign these general foremen and foremen on whom we have relied to act for us to see that the work is done in the shops so that instead of being our agents working in our interests they become associated through labor organization with the workmen whom they are supposed to supervise in our interests you will have made a change that goes to the root of our present methods of employing people in manufacture. This change will so greatly undermine present efficiency that

industry cannot be responsible for output in time of war or employment when peace comes."

Mr. Houston: We might break down and admit that Chrysler and the workers there have done a great job. Was there any reason to believe that that would change if the foremen are permitted to organize?

Mr. Iserman: I think, sir, that there is every reason to believe it.

Mr. Houston: They did not represent the shop employes. Well, do you expect them to if they organize independently?

Mr. Iserman: I say there is every reason in the world to believe it, sir, and I will tell you this also, that if the shop people were not organized we would have done even more marvelous things, because the U. A. W.
147 C. I. O. which got bargaining rights in 1937. All they want is recognition. We recognized them. Then they said all we want is a contract. We gave them a contract, a grievance procedure, all the paraphernalia of collective bargaining, mediators, committeemen, stewards, arbitrators, the War Labor Board. It is all there and they have that for eight years, sir, and what do we have?—a lot of strikes, more strikes, more strikes, and today Mr. Weckler is in Detroit because of the Great Dodge Local No. 3 of the U. A. W. C. I. O., with all of its collective bargaining rights, is on strike in defiance of the labor of the War Labor Board.

Mr. Houston: Well, on top of all that, haven't you compiled the greatest record in your history in the past year?

Mr. Iserman: I should say not, sir.

Mr. Houston: When did you exceed it?

Mr. Iserman: What kind of a record do you mean? Are you talking about strikes? Yes. We have had more strikes in the last year than ever before. (Applause) And I say every man to his own taste.

Mr. Houston: I am talking about production.

Mr. Iserman: We have produced more automobiles—

Mr. Houston: Haven't you been cited there by the government for production records?

Mr. Iserman: Yes, sir.

148 Mr. Houston: Certainly.

Mr. Iserman: And we would have done a lot more of it if we hadn't had strikes and strikes and strikes over things that were not grievances. Yes, sir.

Mr. Houston: Yes, sir. You are speculating again.

Mr. Iserman: I am not speculating again because the production records if you would like to examine them,—if you would like to go out in the shops and see what is going on we will show you.

Mr. Houston: Well, I think from what you have said that you are fools to give it to any union or any organization.

Mr. Iserman: I will say this, that if you will judge by strikes, then collective bargaining fares very badly in the automobile industry.

Mr. Houston: I haven't said anything about strikes.

Mr. Iserman: Yes, you have talked about strikes.

Mr. Houston: I am talking about production. You brought up strikes.

Mr. Iserman: You said this morning, sir, if you had a contract wouldn't that settle these strikes over recognition? Yes. It would settle the strikes over recognition, but day after day the organizers and stewards would be out in the shop talking up grievances to strike about. We have seen it for years in the automobile industry. And I say you don't get production when you have strikes,

149 and if you didn't have strikes,—if we didn't have this strike at the Great Dodge plant today we wouldn't be losing four days' production on tanks, B-29 super-bomber engines and all the other things.

Mr. Houston: Well, I admit you have strikes, but on the whole in 1944, what percentage of man days was lost because of strikes to the total number of men working?

Mr. Iserman: In 1944?

Mr. Houston: Yes.

Mr. Iserman: About—

Mr. Houston: About two-tenths of one percent, wasn't it?

Mr. Iserman: Well, if you want to go on that figure, sir, if one department goes down with 50 men in it there are 50 men on strike, but there are maybe ten or twelve or a hundred other departments—

Mr. Houston: Well, you may always have strikes. What we want to do is to minimize them.

Mr. Iserman: Yes. And you will not minimize strikes by organizing foremen into unions that must exist only by showing activity and promoting strikes and discontent.

Mr. Houston: Well, now, if they were to organize independently that would serve the purpose?

Mr. Iserman: That has nothing to do with it.

Mr. Houston: Nothing whatever.

Mr. Iserman: Nothing whatsoever so far as promoting strikes is concerned.

150 Now, if you would like to look at the record, sir, look at Ford's record. They have given more recognition to this union and Ford has had more strikes than any of these other companies have.

Mr. Houston: Let me ask you a question. Now, since they have signed this contract with Ford how many strikes have they had there?

Mr. Iserman: The record is in the Panel Report before you. They contracted in November of 1943. They had two or three big strikes after that, and they have had several stoppages or incidents, as they prefer to call them, since they signed their full contract, and it was only under threat of a strike that Ford signed that contract.

Mr. Houston: I was told, or it was my information, that the contract was signed in May 1944.

Mr. Iserman: They had a contract before that covering classifications and wages and recognizing the union in November of 1943, I believe it was. Mr. Keys, who is here, could tell you.

(Off the record.)

Mr. Iserman: Most of my time, sir, was taken up answering questions. I haven't said a word about the guards.

The Chairman: Well, ten minutes is for your speech and answers to questions.

151 ORAL ARGUMENT OF MR. B. C. GOULD.

Mr. Gould: Mr. Chairman, and Members of the National Labor Relations Board, I am speaking for the Murray Corporation of America. My name is Byron C. Gould.

I am vice-president in charge of operations. The duties of this position include executive responsibility for sales, engineering, purchasing, industrial relations and manufacturing for the entire corporation.

I wish to state the position of our company regarding collective bargaining by union foremen. The Murray Corporation operates plants in Detroit, Ecorse and Belding, Michigan, and in Scranton, Pennsylvania.

In August last year we reached peak production with approximately 800 supervisors directing the activity of over 14,000 employes. We are a mass production industry. In peace time our products are automotive body units. Since Pearl Harbor we have engaged on war work one hundred per cent, producing wings, frames and gun turrets for war planes, anti-aircraft searchlight units, military truck frames and many other war products.

We stated our position to this Board in a public hearing almost two years ago on April 9th, 1943. Many appeared and were heard including representatives of the Foreman's Association of America who are here before you today.

This Board then held in the Maryland Drydock case
152 and in the Murray case that to require an employer in mass production industry to recognize and collectively bargain with a union of its own foremen, I quote: "Would disrupt established managerial and production technic and militate against the effectuation of the policies of the Wagner Act."

The compelling reasons for the ruling at that time exist today and will exist in the future. The achievement of mass production industry in this war has been universally acclaimed a production miracle converting from peace time operations and expanding into volume production of airplanes and other implements of war despite labor and material shortages American mass production industry has succeeded in producing almost impossible quantities of war material for our armed forces and for the forces of our allies.

This accomplishment has been possible only because of te know-how of American industry. This genius for large-

scale production and its managerial technic and good supervision is vital to the management structure. Without loyal supervision the structure will topple production will fail.

If you compel employers to recognize and collectively bargain with a union of its own foremen you will destroy the foundation of effective mass production. Management control over supervision will be at an end. The Foreman's Union will combine with the Production Workers' Union against the company. This is no idle fancy or fear.

153 This is an actual fact. We speak from experience. It has happened to us. It happened in our Ecorse plant two years ago and in our main plant last year, when attempts were made to organize our supervisory officials. That was in the record of our case before you, 51 NLRB 23, and in the proceedings before the Panel of the War Labor Board.

The program of the Foremen's Union who attempted to organize the supervisors at our Ecorse plant admitted on the witness stand on cross examination that in the event of a strike of foremen to compel recognition that,— and here I quote his testimony: "There was an understanding with production workers at the Ecorse plant. The Association of Supervisors had the assurance of assistance from the production workers under their supervision who were members of Local 2, U. A. W. CIO."

Here is uncontradicted proof of collusion between a union attempting to organize supervisors and production workers under them. On July 6, 1943, the National Labor Relations Board then ruled in the Murray Case that a unit of bargaining of foremen was inappropriate. However, in defiance of this order that same organizer engineered a strike on July 10th, 1943 to compel recognition, and in connection with this strike that organizer, who, incidentally, was on the payroll of the Foreman's Association of America at $100.00 a week,— also admitted

154 on cross examination at the War Labor Board's Special Panel hearing that he and certain other Murray supervisors distributed a leaflet to production workers who were under their immediate supervision appealing to

these production workers for help. I quote excerpts from that leaflet. Quote:

"Whatever we gain will be your gain." "What does this mean?"

The Chairman: That is quoted from the circular distributed by the foremen?

Mr. Gould: That is correct. "And what does this mean?" These supervisors are telling production workers who are responsible to them, "help us in our strike and if you ever have a dispute with the company we will side with you and betray the company which we are supposed to represent."

Again I quote from this leaflet—

Mr. Reilly: In fairness to the petitioners in this case, though, wasn't that Foremen's union in that case a separate union, not a chapter of the Foreman's Association of America?

Mr. Gould: I think the testimony, sir, in both the Special Board, the Panel Hearing of the War Labor Board and the National Labor Relations Board establishes that point.

Mr. Reilly: That was a separate—

154 The Chairman: It was not a part of the American Foremen's Association.

A Voice: May I answer that, sir. I am counsel in that case? They started out as separate units.

The Chairman: That is my understanding.

A Voice: (the same) Before the decision of this Board they had affiliated with the Foremen's Association that pamphlet was handed out by the Foremen's Association of America and their name appears in the pamphlet.

The Chairman: Very well. Mr. Gould has the floor.

Mr. Gould: That answers the question. So they were associated at the time the leaflet was handed out. They were associated with the Foremen's Association of America at the time of the strike and at the time it was handed out. In other words, you workers cooperate with your foremen against the company and in the future your foremen will cooperate with you against the company. That's what they said when they quoted in their leaflet: "Are you

a union person going to permit the destruction of your Foremen's Union. With your cooperation your foremen will succeed in their struggle for contract rights such as you enjoy."

Again I quote from this leaflet: "Since the founding of the Foremen's Association of America Labor no longer need worry about foremen who are members of the Foremen's Association of America."

155 What they are saying is that the production workers no longer need worry about a foreman who is intrusted to carry out the company plans and policies.

Now, here is the high spot of the leaflet. Here is what these certain foremen told production workers.

"We, the Murray Ecorse Foremen, know you won't let us down and pledge that we will not let you down in disputes which you may have in the future." Think of that. "We, the Murray Ecorse Foremen know you production workers won't let us down and pledge that we, your foremen, will not let you down in disputes which you may have in the future."

Now, in the face of this can the Foremen's Association of America claim to be independent of the Production Workers Union? They further say in this leaflet: "Your unionism is being tested as well as that of your foremen. Our fight is all organized labor's fight." Is that independence, combining with the C. I. O. production workers in their union does not bespeak independence.

The foregoing quotation from this leaflet clearly reveal the plan of the Foremen's Association to solicit help from the production workers. The plan was put into effect. War production was seriously harmed. Production in Ecorse was impaired during a strike of supervisors in

156 1943. When the strike began we sent a limited number of key executives from our main plant to Ecorse to maintain war production.

The Chairman: What caused that strike?

Mr. Gould: That strike was in protest of the ruling of this Board, sir.

However, after the organizer distributed these leaflets the workers responded and production dropped 50 percent. Again when the Foremen's Association of America

staged a strike at the main plant in May 1944 to compel recognition and only about fifteen percent of the supervisors voted to strike,—the large percentage of supervisors who did not want to strike and remained on the job were threatened and intimidated. Production workers played their part. They hooted, ridiculed and intimidated these loyal supervisors. They refused to cooperate in their production work. They openly supported the Foremen's Association in its strike. Striking supervisors held their strike meetings at the Production Workers Union Hall. It was a real combination against the company. War production suffered. The proof is conclusive. It is undenied. It is in the record before the Panel of the War Labor Board. Obviously such a combination between the Foremen's Union and the Production Workers will be disastrous. How can executive management ever expect supervisors to control and efficiently supervise hourly workers to whom they are beholden?

157 Such a supervisor will not discipline a production worker to whom he is indebted. He will check his efficiency. He will not hold him to high quality or low cost.

Mr. Houston: You are not talking about these printing trades or maritime unions, the construction end of it.

Mr. Gould: I am speaking of our case—

Mr. Houston: Mass production in your case.

Mr. Gould: Mass production in general, but you know out there in the other cases,—you are familiar with them, aren't you, about the foremen being in the unit with the men. They certainly don't allow that.

May I ask you why you think the Foremen attempted to organize?

Mr. Gould: I don't think the foremen are attempting to organize.

Mr. Houston: You don't?

Mr. Gould: I think organizers are attempting to organize the foremen.

Mr. Houston: You are putting them all in one basket.

Mr. Gould: I have reason to believe that that is so.

Mr. Houston: That's the reason I asked you. I would

like to know. I think they are organizing because they have grievances.

Mr. Gould: I don't think that is so. I don't think they could show grievances when they had the opportunity to show grievances.

158 They will not meet production schedules.

The Chairman: There is one thing bothering me, Mr. Gould, and maybe you can clear it up. If the foremen organize they are going to become disloyal to the management because association with the rank and file. Well, how can they become disloyal to the management as the result of such an association unless the rank and file were disloyal. What is your answer to that?

Mr. Gould: I don't know whether this will answer your question—

The Chairman: They say a rotten apple was necessary to start the apples rotting in a barrel.

Mr. Gould: Well, maybe that is the answer, sir.

I would like to make this observation—

The Chairman: Are you willing to take the vow that the rank and file shouldn't be organized?

Mr. Gould: The rank and file can and may be organized. The foremen can and may be organized. What we are protesting against is us to bargain with that organization.

The Chairman: Which organization?

Mr. Gould: The Foremen's Organization.

The Chairman: Well, what about the other unions. Are you protesting against the Wagner Act or are you protesting against something else?

159 Mr. Gould: We are not protesting against the Wagner Act. We are protesting against the manner in which unions are handled. The leaders of the unions are the people who are responsible for the troubles in strikes today in our opinion.

Now, I would like to add to that in answer to your question, sir, as to why we think the foremen shouldn't be organized.

By their own admission the C. I. O. labor leaders tell us in confidence that it is necessary for them, in order to gain the support of their following, to discredit management,

to be hostile to management at all times. On the surface, they are very willing to be cooperative, but actually to the membership they do their best to discredit management.

Now, in any ruling of this Board permitting the organization on the collective bargaining of foremen they will follow the same tactics. And what you are really saying is take part of our management and let them begin to discredit and be hostile to the other part of the management. That does not make for harmony which you must have in order to successfully operate a business.

The Chairman: Would you be in favor of abolishing either the Republican or Democratic party because they besmirched one another?

Mr. Gould: I don't know that that is pertinent at this time.

160 The Chairman: You have two parties and each discourages and discredits the other to a certain extent.

Mr. Gould: I claim that we have one party, sir. We have one management and someone is trying to divide that management.

The Chairman: Well, but the assumption behind what you are saying is that you have got management and then you have got these fellows organized down here who are working with their hands and if the foremen organize and then some way or other they become disloyal because of the association with these fellows out here who presumably,—that is, I am not sure,—are disloyal? I would like to get that cleared up.

Mr. Gould: I don't believe I get your question, sir. Are you asking me?

The Chairman: Well, we are running overtime anyway. Just let it go.

Mr. Gould: I would like to finish my point if I may.

The Chairman: Yes.

Mr. Gould: I am saying that acting for management, he, a supervisor who is organized and collectively bargain for himself, cannot settle grievances with a production worker to whom he is beholden.

Mr. Houston: Why can't he?

Mr. Gould: May I finish please? He cannot be for
161 the company and against the company at the same time.

Again we say, this is no mere speculation. This actually happened to us and this is the same Foremen's Association which seeks to gain legal recognition from you today.

The National Labor Relations Board has a great responsibility in this matter. If you overturn long-established management structure, if you take our foremen out of management you will destroy mass production industry. Effective large-scale war or peacetime production can no longer be assured. We respectfully submit that a bargaining unit of foremen is not appropriate in the public interest. The petition of the Foremen's Association of America for recognition should be denied.

Mr. Houston: Now, what I meant to say was if the foreman is permitted to organize under your theory his loyalty to management is gone because he is going to be loyal to the group down below in the other union. Now, that is what you said a minute ago. Is that it?

Mr. Gould: That is correct and is proven out by the facts, sir. We are not speaking of idle theory. That is an actual fact. It happened in our case.

Mr. Houston: Have you had that up with the Foremen's Union?

Mr. Gould: No, sir. It was in the organizational stage.

The Chairman: The circular came along with that.

162 Mr. Gould: Yes, sir. That's during the strike. And the effect of the circular was the drop in production by fifty percent.

The Chairman: How long have you been there, Mr. Gould, ten years?

Mr. Gould: How long have I been with them?

The Chairman: Yes.

Mr. Gould: I have been with them since 1942.

The Chairman: Since 1942. Before the foremen were organized?

Mr. Gould: Yes.

The Chairman: Did you ever find the foremen playing favorites among the people they supervised?

Mr. Gould: I think it would be rather foolish if I answered that in the negative. I think that's true in life, isn't it? They all play favorites.

The Chairman: I know I don't. I am an exceptional fellow (laughter).

Mr. Gould: I am glad to meet the first gentleman I ever met that didn't.

The Chairman: But what would you do with those guys, that's what I want to know?

Mr. Gould: We have testimony before the War Labor Board, a special panel, in which we have submitted the plan that we have had into effect and which would
163 be even more effective if it wasn't sabotaged by the same Foreman's Association of America, and that is that we have a Foremen's Counsellor. The foreman has recourse to this counsellor. He is there for the express purpose of talking any problem over with the foreman if he so chooses.

The Chairman: He is counsellor, one man?

Mr. Gould: One man, that's right.

The Chairman: He makes decisions or he acts as Father Confessor?

Mr. Gould: He is the Father Confessor if you like. He has the authority to influence decisions. He has the authority to make whatever decisions are within the company policy.

Mr. Houston: But you think it would be absolutely disastrous if the foremen were permitted to organize and do bargaining collectively for themselves?

Mr. Gould: We feel very emphatically that is so.

Mr. Houston: And yet you have never had a contract with foremen.

Mr. Gould: We have had evidence and we have had the experience of them trying to organize. We have had experience with the Production Workers Union. We are well aware of their tactics. We have no reason to believe the tactics will vary.

Mr. Houston: They are all the same, are they?

164 Mr. Gould: That's right.

The Chairman: Representative of Bohn Aluminum.

ORAL ARGUMENT OF MR. S. D. DEN UYL.

Mr. Den Uyl: Gentlemen, my name is Simon Den Uyl. I am secretary and treasurer of the Bohn Aluminum & Brass Corporation. We have fourteen plants in operation and employ about ten thousand people. You have allotted me ten minutes but I will take only about two. The reason I won't take any more time is because my company concurs in the general opinions expressed here by General Motors, Chrysler and Murray. But there is no sense in repeating it for that reason, and I know the time is short anyway.

But I happen to know that not only our company but hundreds of other companies are vitally interested in this problem. And as a matter of fact, we are probably represented here today for the same reason that I am here and that's mainly that we feel so keenly that the war production effort and the peace time, post-war effort is going to be hurt.

Mr. Houston: Why do you say that, that war production will be hurt if the foremen—

Mr. Den Uyl: Because I am a great believer in the doctrine that no man can serve two masters and you cannot divide management in two parts.

Mr. Houston: Why two masters?

165 Mr. Den Uyl: I claim, Mr. Houston, if you were my boss and I had another boss down here and you told me what to do I would do what you told me to but I would have to tell the person down here to do the same thing. If that person didn't do it you would probably discharge me, wouldn't you?

Mr. Houston: I would hold you responsible.

Mr. Den Uyl: Certainly. Well, how can you hold me responsible for doing something that this person has an equal right as I have? In other words, that person would come to me and say, "I won't do it." I go back to you

and say, "You won't do it," and then we have got to bargain collectively, the three of us, to see who is going to do it.

Mr. Houston: Well, wait a minute. You haven't the authority to do it through someone else. You can do it yourself.

Mr. Den Uyl: But I don't have the authority. You don't give me the authority.

Mr. Houston: Well, does the foreman have the authority today?

Mr. Den Uyl: I think he has, sir,—

Mr. Houston: I can't take it away from him then if he organizes?

Mr. Den Uyl: Yes, sir. You can't have a sub-foreman and another sub-foreman and a general foreman all perhaps of the same mind. The sub-foreman has got to
166 take instructions from the general foreman. You can't divide it up.

Mr. Houston: Well, I understand that, but you think all the loyalty—I just don't see it that way.

Mr. Den Uyl: Well, I do, Mr. Houston. It is a difference of opinion, but I strongly feel that way.

I think the representatives that are here today feel the same as I do about it. As a matter of fact there are about 336 plants represented here now probably employing a million people. All of them probably are not here this afternoon because some of them had to get back on the train, but take this as an example. There is the Hersey Company operate twelve plants and employ 9500 people. Mr. Crawford here listening in to this meeting today, Mr. Townsend of Trico Brian, they operate a plant with 2,000 people in it. Mr. Reban, who is president of the Trunsco Lab work—

Mr. Houston: I understand all that. I remember not so many years ago when they started to organize industry on the mass production basis and I heard a good many cries that this is the end of free enterprise. It is all over. And in 1944, if I read the financial pages correctly, the net return was greater than in any year in the history of America.

Mr. Den Uyl: Well, I am not here to discuss the income of the United States.

Mr. Houston: I know; but you are looking at the picture of what is going to happen if these fellows organize.

167 I go back a little bit and remember what was said when the workers organized, and it hasn't proven too wrong at that.

Mr. Den Uyl: I am not prepared to discuss the income of this company. I don't think it is something that I should do anyway. But I am showing you that there is a genuine interest and a feeling on the part of various companies, a lot of them, that this decision may be very, very vital to them, and Mr. DeVleet was vice president of the Nash Kelvinator Corporation. They employed 20,000 people and operate six plants. He is here today. Mr. Graham of the B. F. Goodrich Company. I don't know how many plants he operates but he has got 50,000 employes. Mr. Waldren of the Hudson Motor Car Company, three plants, 18,000 employes. Mr. McKeaman, Thompson Products, Inc., 5 plants, 14,000 employes. President, Mr. Enos, of Standard Springs, Steel Spring Company with eight plants employing 5400 people. Albert Jackson, president of Aeronautical Products, two plants, employ 3500 people. Mr. J. F. Dibley, Johnson Brown, employ 1700 people. Mr. Tarbell of ..... Manufacturing Company, employing 850 people. Detroit Steel Products Co., representative. They employ about 1200 people. That is in addition to the General Motors, Chrysler and Murray people here.

Mr. Houston: I would maybe say that in every one of those plants, not knowing, that the men are organ-

168 ized and with management have done a remarkable job.

Mr. Den Uyl: I couldn't answer that question, Mr. Houston, because I don't know. I gathered this list together after we adjourned. It is not complete. I felt that a keen interest was shown here by these people coming down here and taking the day off from their work.

The Chairman: May I ask a few questions?

Mr. Den Yul: Yes, sir.

The Chairman: You took these names. Now, are these the names of people known to you as being of the same opinion as you expressed? You are speaking for that group along with yourself and others?

Mr. Den Uyl: I am, sir, and they can speak for themselves, but I have sought out the individuals representing these companies and that is not expressing any opinion only in principle that we are opposed to the collective bargaining.

There are numerous others, for instance, Vice President Mr. Rich of Continental Motors, 24,000 employes, and the U. S. Industrial Chemicals, Inc., with 1600. Mr. Cushing, and Mr. Hobbs, vice president of U. S. Rubber, about 70,000 people. Mr. Love of the Federal Ship & Drydock. They operate two plants and employ 31,000. Mr. Downey, vice president and treasurer of Kelsey Hayes, 7500. Mr. Harnisch, the Mack Manufacturing Corporation,
169 18,000, operating three plants. President, A. J. Weathered & Company, five plants with 3500, and Mr. Thomas here, representing the Firestone Tire & Rubber, they operate 54 plants and employ about 75,000 people. Mr. Fred Alma, the Raybestos Manhattan Company, 6 plants, 7,000 people, and Mr. Leonard is here from the Jamestown Metal & Equipment Company, 250 people. Mr. Randell, works manager and secretary of the Marlin Rockwell Company, 2700 people, and operate 2 plants. Mr. Bang, representing Edward J. Budd; they employ approximately 18,000 people, six plants, and Mr. Anderson of the Leland Gifford Company, and the Moss Twist Company. They have five plants and two of them and employ about 3800 people. So that I think that the interest is very evident. And I merely bring that out and there is no use of me repeating what some of the other ones said, because in general I would concur in what they have said.

The Chairman: The National Association of Manufacturers wherein they have three representatives as I understand it. Mr. Smethurst, Mr. Kane and Mr. Moore.

ORAL ARGUMENT OF MR. R. S. SMETHURST.

Mr. Smethurst: Mr. Chairman, my name is R. S. Smethurst, counsel for National Association of Manufacturers. I know the time is getting late, Mr. Chairman, and in order to save a few more minutes I would like permission to file a brief covering some of the legal points involved in
170 this if we can get it in by the end of the week.

The Chairman: Yes, that will be satisfactory.

Mr. Smethurst: All right. And then just one word of introduction of two additional witnesses on behalf of the association.

The Chairman: We have no witnesses. We have just speakers.

Mr. Smethurst: They will speak for themselves, Mr. Chairman. They may prove to be witnesses or speakers.

But over a period of two or three years this Board in a series of decisions concluded that organizations of supervisors were not appropriate units for collective bargaining. The beginning of that series of cases was in the Maryland Drydock case; and in that case, if I may paraphrase the majority opinion, this Board concluded that to recognize supervisors as an appropriate unit would seriously disrupt managerial and production techniques.

Believing that the Board is much more interested in those aspects of the case we brought two witnesses and the first one I would like now to present, Mr. Kane, who is director of the N. A. M. Industrial Relations Department and formerly connected with the "Training Within Industry Section of the War Manpower Commission."

Mr. Houston: May I ask you a question. I don't know whether I should or not, but I ask you this because
171 I asked the man this morning who was speaking for Packard Motor Car Company,—I asked him if his company was a member of the National Association of Manufacturers.

Mr. Smethurst: I couldn't answer that as a matter of fact. My guess would be that they probably are.

We have some 13,000 members, individual manufacturing companies, and it is just impossible to remember all of them.

Mr. Houston: What are you organized for?

Mr. Smethurst: Well, it is a long story.

Mr. Houston: Well, I know but organized—

Mr. Smethurst: We are not organized to bargain collectively.

Mr. Houston: That's right. But you are organized for mutual protection?

Mr. Smethurst: That's right, and on a purely voluntary basis. Everything done is on a voluntary basis. Anyone who subscribes to any activity of the Association does it on a voluntary basis. There is absolutely no compulsion, and if you know the sentiment of the great majority of managers in industry you know that independence is insisted upon in our organization perhaps even to a greater extent than outside in other activities. But the organization is purely voluntary.

Mr. Houston: If they come in and volunteer to join you accept their dues, I hope.

172 Mr. Smethurst: Oh, absolutely. We try to encourage them to see the advantage in joining.

Mr. Nelson: May we have a copy of that.

The Chairman: Send him a copy of it. Send at least three in here. We may all want to read it at one time.

ORAL ARGUMENT OF MICHAEL J. KANE.

Mr. Kane: Mr. Chairman, my name is Michael J. Kane, and as Mr. Smethurst said since January 1st of this year I have been the Director of Industrial Relations for the N. A. M.

For four and a quarter years prior to that as one of the four men brought into Washington by the Advisory Committee for the Commission of National Defense in 1940 to do some work which I believe is in this field. All I can offer are facts of a national character which may or may not be germane to the particular issue but I think this committee ought to weigh them for what they are worth.

It was early determined when the defense program got under way that there was a tremendous amount of training that had to be done to effectuate that change. There

were fields outlined by a committee, headed by Owen D. Young, we believe, and the divisions of the fields were somewhat as follows:

There would be a tremendous amount of skilled worker training for new skills or for different skills. That
173 was allocated and divided and taken care of beautifully by the agencies that then existed, the Vocational Educational Department, the National Youth Administration which was effective at that time, and the Apprentice Division of the Department of Labor.

Another division,—another field, was recognized and that was of aiding and quickening the development of a number of skilled engineers on technical matters. That particular field was allocated to presently constituted agencies, colleges and universities, vocational education departments and ultimately wound up with the Efficiency Management Workers, E. S. M. W. T., I think were the initials of it. That was well taken care of.

They also recognized another field for which there was at that time no particular agency instituted, and that was the field wherein they knew that there must be an increase in management function and ability in order to coordinate all of these things that were going on. And to that end they agreed and decided to take people from industry to set up the devices, the means through which management itself could be induced or aided or persuaded to do its own job of management training, without relying on any other agency. And that was the beginning of what has been called training within industry. It has gone through successively since and the same group is still operating on the same policy which is this: That the
174 training of managerial people, the development of supervisory skills is inherently that of management. They must do that training with their own people, for their own people and at their own expense. And our aim was simply to get that accomplished, realizing that it was their particular problem and that in proportion as they did that well production would come about.

I think it is safe to say that production did come about and that had some bearing on it I am sure.

Now, there are two or three principles in connection with that that I think have a bearing, and then I will sketch if I may, the extent of it.

The basic principles that it operates on are these: Management is the only means which can effectuate good production. Now, it does require the other elements but without management you cannot have good production. So the slogan in this organization is "Better Production Through Improved Management."

Now, that is just terms. It is easy enough to put out terms. They are general.

But here is the interpretation that we have worked on and are still working on, that management in the sense that it is used by "Training Within Industry" in-
175 cludes everybody from the top to the bottom with that organization which directs the work of others regardless of title.

Now, the placing of the foreman as a title is technical. The function of a foreman is not technical. It is that recognized by everybody. It is that of directing the efforts of others to the end that production is brought out as it should be.

Now, on that basis the government has spent over five million dollars maintaining a small organization whose job it was to influence management. Management has spent I don't know how many tens of millions of dollars for this training. There were countless thousands of hours of man power devoted to it. We are told that it worked out rather well.

Now, there is one particular feature I would like to stress here. Never once was there any doubt in the minds of management, the government, the workers or G. W. I. as to where the line of management began or where it ended. It takes in everybody from the newest recruit and we have all done that. Everybody that moved into management came from that as I did. It includes the very top so that the procedures that were developed and the means used to get them effectuated were applied and are applied now equally to general manager as they are to the

greenest lead man, and that principle has been con-
176 tinued and we believe that there never is any ques-
tion of it being possible to draw a line between supervising and managing. It is just like seeing the difference between breathing and management. A supervisor must manage and a manager must supervise. I am not trying to attempt to say where that line should be drawn. All I am saying is that in 17,000 plants in this country top management was induced to give that training, not only the initial training but to get it continuously used day to day to develop the skill of management, and 1,500,000 supervisors in this country have had it and it still seems to be going quite well. Thank you. Are there any questions?

Mr. Houston: I don't deny or discredit anything you have said. I am inclined to agree with what you have said. But I don't yet see why it would be disastrous for the foremen to organize and bargain collectively for themselves.

Mr. Smethurst: I think this, if you will permit me to say so, if you say "the foreman" you are drawing the line some place in that managerial organization.

Mr. Houston: Well, in this case, I would take from what was specified in the case this morning, general foremen down to special assignment, including assistant foremen and foremen.

Mr. Smethurst: Well, not in my judgment, and I have developed before, I think that is drawing a line arbitrar-
ily that may not stick there. It may be necessary
177 to make the line lower or higher.

Mr. Houston: That's right, and then when we go to vote if we set up this unit there will be challenges, by both sides, no doubt, and then we will have to resolve the problem at that time.

Mr. Kane: Well, again, I was interested in listening to the testimony on details. This much I am sure of. Having been personally in contact with a good deal of this training I know the extreme necessity for having leadership, call it what you may, but the getting of good job relations is a managerial function contained and used by

the very first and lowest line of supervision. The grievances begin there. They start there. They can be settled there and hence it is management's obligation to see that these functions are used at the very lowest level and my judgment is if you draw a line any place it ought to be—

Mr. Houston: Do you agree or do you admit that the foremen themselves might have some grievances?

Mr. Kane: I will have to agree with these gentlemen who preceded me and say that we all have grievances, but organizations are already in effect for taking care of management grievances. Every management that I know of has gone to the extent of setting up an organization chart showing the functions and very frequently showing the names, the names of those who assigned those functions. Here is a clear line through which personal or group or individual grievances can and ought to be settled.

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Mr. Houston: But evidently are not.

Mr. Kane: Well, there are a lot of grievances that ought to be settled—

Mr. Houston: Yes. I agree with that.

The Chairman: Mr. Moore.

ORAL ARGUMENT OF MR. LEO MOORE.

Mr. Moore: Gentlemen of the Board, my name is Leo Moore. I am vice president and general manager of Sealed Power Corporation, Muskegon, Michigan. I am here today speaking as a managing executive of our company and I am also speaking in behalf of the National Association of Manufacturers.

I speak for them by virtue of the fact that in 1942 and in 1943 I was both Member and Chairman of the Association's Committee on Supervisory Management.

I am somewhat confused and bewildered by much of the statements that have been made here today because they are talking to the point of loyalty to management. It seems to me that as I have tried objectively to study the obligations imposed upon me as an operating executive there has come through my experience a growth in the ap-

preciation of the importance of the human element associated together to form the enterprise known as a company. I shall speak specifically, "a" company.

179 All through the history which began with the industrial revolution in England, which occurred in the eighteenth century, there has been a slow, admittedly, but a steady improvement in the appreciation of the importance of the human element in industrial affairs.

Speaking for myself the importance of that element has been impressed greatly by the problem that we faced during the war. Our company was a so-called small closed corporation. We had finally gotten up to a point of employment late in 1941, which was the biggest year before the war of our industrial output, to 1250 employes. We were suddenly confronted with the necessity of expanding to a maximum employment of 2856. This required us to employ and upgrade, which we did without exception, men from our own rank and file and women into supervisory positions.

We were impressed by the fact that we had to do something about training these people. We had never had the mass effect of having to face such a problem in our past because what few times we had to elevate a man to a foremanship we could take that training problem in our stride. Consistent with that particular time the importance of doing this job was impressed upon the National Association of Manufacturers, to the end that the committee on Supervisory Management in 1942 became active and produced this particular booklet which was printed

180 in 1943, in April of that year, and which I am told by the staff of the Association circulated in something to the amount of 20,000 copies. The title of this book is "The Foreman, the Key Man in Your Plant."

We effectuated and planned to carry out the principles set forth in that booklet in our 1943 committee, which was done, and the findings were issued in the middle of 1944 under this title. I shall be glad to place those in record if you care to see them.

In this particular case it is interesting to observe that we called in and made part of the operating of the com-

mittee that formulated these booklets, a group of foremen, one from each plant which had a representative from management on that committee.

I think as I observe the problem of industrial production, with all its implications of public service, that it becomes advisable and essential for a unity of purpose to become established in the industrial group that forms the company. I don't think that there is exactly a question of loyalty to management. I think the bigger loyalty is the loyalty to the organization. It is to my mind—

The Chairman: It goes from the top to the bottom.

Mr. Moore: Absolutely. And it is dictated by self-interest because as I have many times told the representatives of the U. A. W. C. I. O. with whom I had to deal the seniority clauses through which they have at-
181 tempted to gain security in our organization are not worth one bit of paper that they are written on except that our company stay in business. Therefore, their self-interest deserves that they must dedicate themselves to the overall effectiveness and success of the company.

It has been in my observation, Mr. Houston, that you have raised in the past, during this day, the question of assumption or conjecture. It has been my observation in five years of dealing with first the U. A. W. A. F. of L. and later with the U. A. W. C. I. O. that union organization, regrettably, brings about a division of interest on the part of the employe which I believe I have a right, based on my own personal experience, to assume will follow when foremen become members of unions.

If that is a valid statement, and I speak now from my own personal experience, if that is a valid statement it therefore follows that their self-interest will not be served but rather otherwise, because their division of interest will unquestionably result in a loss of effectiveness of the company with which they are associated. There must be first a successful enterprise before any group within the company can bargain about or determine what division of the results of the enterprise shall be divided between them.

Mr. Houston: Don't you think it might even help if they

were organized? I don't mean in your particular
182 plant. Maybe some other plants where there is a great deal of dissatisfaction in that particular group of foremen.

Mr. Moore: Mr. Houston, I feel that that matter should be left to the individual plant to determine and I submit you gentlemen by ordering collective bargaining for foremen place a tremendous stamp of approval on that sort of thing. After all, organizing is a sales job, and it becomes quite an aggressive sales job, and I know we went through plenty of trouble, with commensurate loss of production all during the time that the organization of our hourly-rated employes was proceeding, and I would anticipate that war production would seriously suffer by the readjustment that would necessarily have to follow this completely new and novel idea of foremen being organized into groups when everything that we have done in our plant has been dedicated to the principle that they are part of the total management group.

I submit just one statement to point out my feeling with respect to the change of interest.

In an attempt to foster better morale, a better understanding of the necessity of becoming a part of a total group, we started as many companies have done in the past a small plant publication about a year and a half ago. For what reason I have never been able to figure out until just recently, the officers of our local union, not the international officers, now, mind you, as far as I know, I
183 make no claim of that. The officers of our local have consistently resisted all attempts that we have made to get the people within their organization to cooperate in that little publication.

We stated as a matter of principle at the outset that we would never, and we never have, used it for propaganda purposes. It was simply a little country news sheet, if you will, in the interest of solidifying the group and getting the feel of one. They have never permitted pictures to be taken. They have never permitted news items to be given to that publication. They have continually resisted all efforts to make it successful.

Now, the other day,—

Mr. Houston: At the same time on that publication did you go to the Local and say: "You could have a column in there" or permit them certain space for whatever you want to say?

Mr. Moore: We told them that any news that was of their group that was not specifically union news, but was in part of their group as members or a segment of the total group were perfectly proper to be put in. As a matter of fact, where news has become a matter of public record, like basket ball scores and that of teams representing them, they have been published in that publication.

Mr. Houston: But it was not a union publication. It
184 was a company publication. Isn't that right?

Mr. Moore: It was an employe group publication, if I may so designate it.

Mr. Houston: Sponsored by the management?

Mr. Moore: That's right. In an appreciation of the total group working together for a successful enterprise.

Now, in speaking of them recently as to why they opposed our efforts in that matter, and I am just going to close up here. The chairman of the bargaining committee and the vice president, who was also vice president of the union, said this: "I have described the purpose behind this magazine to get this total group to understand that they were one together in this enterprise." And his statement to me was: "Well, we are afraid that if you do succeed in integrating this group together and building a group consciousness we will turn to you people for leadership and we will be left high and dry without any followers."

If that doesn't represent a division of interest that is detrimental to the success of the enterprise—I am not speaking to the point of loyalty to management at all. There is a loyalty to the citizenry of the community in which we operate. We pay a substantial payroll in our community. We have all those things that you gentlemen are well aware of, and I think our company, I can stand on the record as demonstrating a high sense of
185 public service and public responsibility.

Mr. Houston: Does the C. I. O. have a closed shop contract?

Mr. Moore: We were given a second maintenance of membership contract that the old National War Mediation Board handed out, a matter of doubtful—

The Chairman: That wasn't the next to last one, was it?

Mr. Moore: It was next to the first one. (Laughter.)

Immediately thereafter within a matter of about two weeks we had a strike of ten days duration.

The Chairman: Against the maintenance of membership?

Mr. Moore: Against the wages that were handed out by the National— (Laughter.)

The Chairman: They may have another about the first of April.

Mr. Moore: I feel very deeply in this matter and I think that it should be left to an invididual plant to determine how best to organize for the purpose of effectuating the best success of the enterprise.

Mr. Houston: Well, of course, if we make a decision we are only making it in one particular case.

Mr. Moore: But when you order them to do that against the will of management you are placing a definite stamp of approval on such action.

Mr. Houston: Well, I know, taking your own argu-
186 ment, you said they ought to be allowed to organize in any particular plant where they want to organize?

Mr. Moore: I can't speak for other plants. You have named here the success, for example, in the printing trade.

Mr. Houston: Yes.

Mr. Moore: They evidently have taken care of the problems of management or the foremen in the management group. I am not at all familiar and I can't speak to that point. I do know that speaking for our own plant alone, however, that there would be a period of adjustment that would be necessary to go through and at this time in the face of the manpower situation with which the country is confronted, and the production need,—and Heaven knows we are too far behind in production now to be proud of our record in that score.

Mr. Houston: What you are saying is that the readjustment of organization—

Mr. Moore: But for what purpose are they going to have this ability to organize? There are no grievances in our plant that we know of that are significant. Our foremen are better paid than a lot of our superintendents, as a matter of fact.

Mr. Houston: Well, if they don't want the union they probably won't take it. I don't know what you have got to worry about.

Mr. Moore: But the pressure is certainly there.

187 The Chairman: I was wondering whether or not the attitude of that local union was for the reason it gave or the other way around. They said they were afraid that management was trying to undermine the union by publishing a company paper. Of course there would be more than one reason for opposition. I am just wondering what they said to you.

Mr. Moore: This local union has published a periodical, a publication that comes out twice a month, so to speak, a mimeographed collection of sheets that they have put out to all employes since right after they got their first contract with us.

The Chairman: This is the automobile workers?

Mr. Moore: This is the U. A. W., first A. F. of L. and then U. A. W. C. I. O. and if you were to look over the general tenor of that publication from the time of its inception to the last issue that was put out you would find in there absolutely nothing so outstanding as the castigation of management.

Mr. Houston: All right. Now, that's the reason I asked you a while ago if that paper was management-sponsored.

Mr. Moore: This was the union paper.

Mr. Houston: I know you are talking about the union now, but the one that you put out.

Mr. Moore: Yes.

188 Mr. Houston: You didn't tell us a while ago that the company—the union had brought it out. It was just that the company had sponsored it. Now, we find that we have two. Why not call in a committee of management and labor to edit the paper and have one paper go out?

Mr. Moore: I think that would be an excellent idea. We

have proposed that to our union, but we don't believe that strictly union news has a place in our paper.

Mr. Houston: Well, there you are.

Mr. Moore: If a group of employes acting together, whether they be part of the union group or not, that's perfectly all right; but I submit that they have done the identical thing. We have had for years a so-called Benefit Association that was managed by a Board of Trustees to be elected by all of the people employed by the company that wanted to join, both hourly and salaried employes. When the union organized they took that thing over lock, stock and barrel. They put out a slate and by their very numbers they took over the operation of the Benefit Association. They are in quite a lot of trouble now financially because their benefits have not been on the basis of good insurance practice. And they don't quite know what to do with it now.

Gentlemen, unless there are some questions that is all I have to say.

The Chairman: Is there anyone here to represent the Chamber of Commerce?

189 ORAL ARGUMENT OF MR. WM. A. CREVELING.

Mr. Creveling: Gentlemen, my name is Wm. A. Creveling, U. S. Chamber of Commerce.

In February '44 we filed a fairly comprehensive brief with the Board on the Republic Steel case.

The Chairman: Yes, it is here.

Mr. Creveling: And at this time since the position of the Chamber has not changed, we merely filed a short supplemental brief incorporating by reference the earlier brief.

The Chairman: Yes, thank you very much.

Mr. Creveling: Thank you.

The Chairman: Well, thank all of you very much. It has been a long and tedious day for you but I think you will profit a good deal from the speeches.

(Whereupon the oral argument was closed at 5:45 p. m.)

BOARD'S EXHIBIT NO. 1.

United States of America
National Labor Relations Board

Petition for Certification of Representatives.

The undersigned Petitioner hereby alleges that the Employer named below has refused to recognize Petitioner as the exclusive collective bargaining agent of all the employees in the bargaining unit hereinafter described and that such refusal has given rise to a question concerning representation affecting commerce within the meaning of the National Labor Relations Act. Pursuant, therefore, to Section 9 (c) of said Act, Petitioner requests the National Labor Relations Board to investigate such controversy and certify to the parties the name or names of the representatives designated or selected by the employees.

1. Name of employer Packard Motor Car Company.

2. Address of establishment 1580 E. Grand Blvd., Detroit, 11, Michigan.

3. Industry Manufacture of automobiles normally; manufacture of war materials at present.

4. Petitioner Foreman's Association of America (Independent).
(Indicate affiliation, if any)

Do Not Write in This Space
Case No. 7-R-1884
Docketed October 20, 1944

5. The alleged appropriate bargaining unit (describe below groups of employees or individual job classifications). Includes Employees classified as assistant foremen, foremen and general foremen, and employees classified as foremen but referred to as "special assignment" employees.
Except for

6. The Unit contains approximately 875 employees, of which number 872 have designated or selected petitioner as their bargaining representative.

Board's Exhibit No. 1

7. The following individuals or labor organizations claim to represent employees in the Unit:

None
.....
(Name and affiliation, if any)

None
....
(Address) (Contract expiration date)

.....
(Name and affiliation, if any)

....
(Address) (Contract expiration date)

By ROBERT H. KEYS,
President.
(Signature and title of petitioner's representative)

FOREMAN'S ASSOCIATION OF AMERICA,
515 Barlum Tower, Detroit, 11, Mich.,
(Address)

Cadillac 2828
(Telephone number)

Attorney for Petitioner:

WALTER M. NELSON,
1438 Dime Bldg.,
Detroit, 26, Mich.

Subscribed and sworn to before me this 19th day of October, 1944, at Detroit, Mich.

MAXWELL J. SILVERSTEIN,
Notary Public, Wayne Co., Mich.

My commission expires Dec. 2, 1945.

BOARD'S EXHIBIT NO. 2

United States of America
Before the National Labor Relations Board
Seventh Region

In the Matter of—

PACKARD MOTOR CAR COMPANY,
and
FOREMAN'S ASSOCIATION OF AMERICA (Independent),
Petitioner.

Case No. 7-R-1884

Notice of Hearing.

The Petitioner, above named, having heretofore filed with the National Labor Relations Board, Seventh Region, a Petition for Investigation and Certification of Representatives, pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, copy of which Petition is hereto attached, and it appearing to the National Labor Relations Board that a question affecting commerce has arisen concerning the representation of employees described by such Petition,

You are hereby notified that pursuant to Section 9 (c) of the Act, on the 4th day of December, 1944, at ten o'clock in the forenoon of said day in Room 1332, National Bank Building, Detroit, Michigan, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board upon the question of representation affecting commerce which has arisen, at which time and place the parties, above named, will have the right to appear in person or otherwise, and give testimony, and persons or labor organizations desiring to intervene and to participate in the proceeding may petition for leave to do

so in accordance with Article III, Section 5, and Article II, Section 19, of the Board's Rules and Regulations.

In Witness Whereof, the National Labor Relations Board has caused this, its Notice of Hearing, to be signed by the Regional Director for the Seventh Region on this 25th day of November, 1944.

FRANK H. BOWEN,
Regional Director, National Labor Relations Board.

(Seal)

BOARD'S EXHIBIT NO. 13.

United States of America

Before the National Labor Relations Board,

Seventh Region

In the Matter of

PACKARD MOTOR CAR COMPANY

and

FOREMAN'S ASSOCIATION OF AMERICA (Independent).

Case No. 7-R-1884

Stipulation and Agreement.

It Is Hereby Stipulated and Agreed by and between Packard Motor Car Company and David Karasick, Attorney, National Labor Relations Board, that the Statement of Facts hereinafter set forth may be introduced in evidence by the National Labor Relations Board in the above

entitled matter in lieu of testimony of witnesses and shall have the same force and effect as though witnesses had appeared and testified as set forth below.

It is further stipulated and agreed that neither Packard Motor Car Company nor the Board shall be precluded from introducing additional evidence relative to the jurisdiction of the Board in this matter.

Statement of Facts.

I.

Packard Motor Car Company, herein called the Company, is a Michigan corporation with its principal office and place of business in Detroit, Michigan. Prior to 1941 the Company was engaged at its Detroit plants in the manufacture and sales of automobiles. Since 1941 the Company's manufacturing facilities have been converted to the manufacture of munitions for Army and Navy Ordnance and the Company is at the present time engaged in almost 100% war production.

II.

The Company annually purchases raw materials valued in excess of $5,000,000.00, of which 50% is obtained from sources outside Michigan and is shipped to the respondent's plants located in Michigan. The Company's annual sales of finished products are valued in excess of $5,000,000.00, of which 90% represents sales of such products shipped from the Detroit, Michigan, plants of the Company to places located outside Michigan.

Dated at Detroit, Michigan, this 18th day of December, 1944.

PACKARD MOTOR CAR COMPANY,
By LOUIS F. DAHLING,
PERCY J. DONOVAN.

DAVID KARASICK,
Attorney,
National Labor Relations Board,
Seventh Region.

BOARD'S EXHIBIT NO. 14.

Copy

FOREMAN'S ASSOCIATION OF AMERICA.

National Office

Phone CA dillac 2828 515 Barlum Tower

Detroit 26—Michigan

November 25, 1944.

Registered—Return Receipt Requested.

Mr. Elmer Patzkowsky,
Manager Industrial Relations,
Packard Motor Car Co.,
1580 E. Grand Blvd.,
Detroit, 11, Michigan.

Dear Sir:

A vast majority of the foremen employees of the Packard Motor Car Company are members of the Foreman's Association of America, Chapter #5.

They have selected the Association as their representative for purposes of collective bargaining with the Company on their wages, hours and conditions of employment. A conference between representatives of the Company and the Bargaining Committee of the Association chosen by the foremen employees is requested for the purpose of starting negotiations to arrive at a signed agreement.

An answer to this letter stating the time and place that this conference may be held is requested within a week from this date.

Very truly yours,

ROBERT H. KEYS,
President,
Foreman's Association of America.

RHK:JC

cc—Mr. Geo. T. Christopher,
President.

Mr. Walter Smith,
Labor Relations Manager.

BOARD'S EXHIBIT NO. 15.

Copy

United States of America.

Before the National Labor Relations Board,

Seventh Region.

In the Matter of— PACKARD MOTOR CAR COMPANY (Name of company) and FOREMAN'S ASSOCIATION OF AMERICA. (Name of petitioner)	Case No. VII-R-1279.

Petition for Investigation and Certification of Representatives Pursuant to Section 9 (c) of the National Labor Relations Act.

(Date filed January 15, 1943.)

1. Name of employer Packard Motor Car Company.

2. Address 1580 East Grand Boulevard, Detroit, Michigan.

3. General nature of business Manufacturing.

4. Description of the bargaining unit which petitioner claims is appropriate A single organization of all fore-

men employed by Packard Motor Car Company under the rank of those formulating policies and giving advice.

5. Approximate number of employees in such unit 656 Foremen.

6. Approximate total number of employees in plant or plants involved 670 Foremen.

7. Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining 656 members.

8. Who is the present bargaining representative of employees? None other than petitioner.

9. Names, addresses, and affiliation of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit None.

10. Is there an existing or recently expired contract, and if so give expiration date? None.

11. The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that:

(1) Lately the representatives of said employer met and discussed its foremen's problems, reserving recognition.

(2) Later said employer has refused to recognize, meet with or negotiate in good faith with petitioner.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9 (c) of the National Labor Relations Act, the National Labor

Board's Exhibit No. 15

Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

/s/ WALTER M. NELSON,
Attorney for Petitioner,
1438 Dime Building,
Detroit, Michigan.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the full name, local number and affiliation of the organization and the name and official position of the person acting for the organization.)

FOREMAN'S ASSOCIATION OF AMERICA,

By /s/ ROBERT H. KEYS,
President,

/s/ WILLIAM FISHER,
Secretary,
5746 Schaefer Road,
Dearborn, Mich.,
Cedar 1312.

Subscribed and sworn to before me this 11 day of January, 1943, at Detroit, Michigan.

/s/ WILLIAM G. ELLIOTT,
(Seal) Notary Public, Wayne County, Mich.

My commission expires Feb. 27, 1946.

BOARD'S EXHIBIT NO. 16.

United States of America.

Before the National Labor Relations Board,
Seventh Region.

In the Matter of— PACKARD MOTOR CAR COMPANY and FOREMAN'S ASSOCIATION OF AMERICA	Case No. VII-R-1279.

Agreement for Consent Election.

This Agreement, made and entered into this 1st day of February, 1943, by and between Packard Motor Car Company (herein called the Employer), and Foreman's Association of America (herein called the Union):

A Petition for Investigation and Certification of Representatives, pursuant to section 9 (c) of the National Labor Relations Act (herein called the Act), having been filed by the Union with the Regional Director for the Seventh Region of the National Labor Relations Board (herein called the Regional Director and the Board, respectively), alleging that a question has arisen in respect to the representation for purposes of collective bargaining of certain employees of the Employer;

It Is Hereby Agreed as Follows:

A Unit.

All foremen and assistant foremen, excluding certain supervisory general foremen who formulate policies and give advice and plant superintendents (herein called the Unit), constitute a unit appropriate for the purposes of collective bargaining.

Board's Exhibit No. 16

II. Secret Ballot.

An election by secret ballot shall be conducted under the direction and supervision of the Regional Director among all employees in the Unit who were employed by the Employer during the pay-roll period ending January 30, 1943, including employees who did not work during such pay-roll period because they were ill or on vacation or in the active military service or training of the United States or temporarily laid off, but excluding employes who have since quit or been discharged for cause, to determine whether or not they desire to be represented by the Union for purposes of collective bargaining.

III. Procedure.

Said election shall be held in accordance with the Act, the Rules and Regulations and the customary procedures and policies of the Board; provided that the determination of the Regional Director shall be final and binding upon any question (including questions as to the eligibility of voters) raised by either party hereto relating in any manner to the election and not specifically covered in this Agreement.

IV. Time and Place.

The election shall be held at City of Detroit voting booth, Corner of Concord & Harper St., Detroit, Michigan, and the polls shall be open between the hours of 6:00 AM to 9:00 AM and 3:00 PM to 7:00 PM on February 24, 1943. Employees will vote after working hours.

V. Notices of Election.

The Regional Director shall prepare and supply to the parties hereto at least 7 days before the election "Notices of Election" describing the manner and conduct of the election to be held and incorporating therein a sample ballot. The Employer, upon the request of and at a time designated by the Regional Director, will post such "Notices of Election" at conspicuous and usual posting places easily accessible to the eligible voters.

Board's Exhibit No. 16

VI. Observers.

The ballots shall be handled and the votes shall be counted and tabulated as soon after the election as feasible by the Regional Director, or his agent or agents. The Employer and the Union will each be allowed to station an equal number of authorized observers, selected from among the non-supervisory employees of the Employer, at the polling place during the election to assist in its conduct, to challenge the eligibility of voters and to verify the tally. Upon the conclusion of the counting the Regional Director shall supply a copy of the tabulation of votes to each party's observers.

VII. Eligible List.

At least 10 days before the election the Employer will furnish to the Regional Director an accurate list of all of the eligible voters as described in sections I and II above, together with a list of all the employees, if any, specifically excluded from eligibility by such sections.

VIII. Objections.

Objections to the conduct of the ballot or to a determination of representatives based on the results thereof, may be filed with the Regional Director within five (5) days after the closing of the polls and copies of such Objections must be served upon the other party. If Objections are duly filed, the Regional Director shall promptly investigate the matters contained in such Objections.

IX. Election Report.

The Regional Director shall, upon the completion of his investigation of the Objections, if any, or otherwise upon the expiration of the period within which Objections may be filed, issue a Report on Consent Election. Such Report shall contain a tally of the results of the ballot and the Regional Director's rulings, if any, on challenged ballots and Objections. If Objections are sustained, the Regional Director may in his Report include an Order voiding the results of the election and in that event shall be empowered

to conduct a new election under the terms and provisions of this Agreement at a date, time, and place to be determined by him. If Objections are overruled or if none have been filed, the Regional Director shall, in his Report, include a finding and determination as to whether the employees in the Unit have selected the Union as their bargaining representative.

X. Approval.

This Agreement is subject to the approval of the Regional Director.

PACKARD MOTOR CAR COMPANY,
(Employer)

By /s/ E. E. WEISS,
(Name of Representative)
Ind. Rel. Mgr.
(Title)

FOREMAN'S ASSOCIATION OF AMERICA,
(Union)

By /s/ ROBERT H. KEYS,
(Name of Representative)
President.
(Title)

Recommended:

/s/ IRWIN E. BANNASCH,
Field Examiner,
National Labor Relations Board.

Approved Feb. 8, 1943.

/s/ FRANK H. BOWEN,
Regional Director.
National Labor Relations Board.

BOARD'S EXHIBIT NO. 17.

United States of America
Before the National Labor Relations Board,
..... Region.

Certification of Counting and Tabulating of Ballots.

Name of employer: Packard Motor Car Company. Case No.: VII-R-1279:

Date of election: February 24, 1943. Date of counting: February 24, 1943.

Place of counting: Detroit, Michigan.

The Undersigned acted as agents of the Regional Director and as authorized observers, respectively, in the counting and tabulating of ballots at the above time and place. We hereby certify that such counting and tabulating were fairly and accurately done and that the secrecy of the ballots was maintained. We certify that the results were as follows:

1. Total on eligibility list	693
2. Total ballots cast	631
3. Total ballots challenged	130
4. Total blank ballots	0
5. Total void vallots	13
6. Total valid votes counted	488
7. Votes cast for Foreman's Association of America	486
8. Votes cast against Foreman's Association of America	2
9. Votes cast for	...
10. Votes cast for (neither) (none)	...

For Packard Motor Car Company
W. L. DEIERLEIN.

For Foreman's Association of America
ROBERT TURNBULL.

For the Regional Director, Seventh Region
ROBERT M. JORDAN,
IRWIN E. BANNASCH.

BOARD'S EXHIBIT NO. 18.

United States of America
Before the National Labor Relations Board,
Seventh Region.

Certification on Conduct of Election.

Name of employer: Packard Motor Car Company.

Case No.: VII-R-1279.

Place of election: Detroit, Michigan.

Date of election: February 24, 1943.

The Undersigned acted as agents of the Regional Director and as authorized observers, respectively, in the conduct of the balloting at the above time and place.

We Hereby Certify that such balloting was fairly conducted; that all eligible voters were given an opportunity to vote their ballots in secret; and that the ballot box was protected in the interest of a fair and secret vote.

For Packard Motor Car Company
J. E. LOCHER 6 AM to 9 AM.
W. L. DEIERLEIN 3 PM to 7 PM.

For Foreman's Association of America
PROSPER TRAEN 6 AM to 9 AM.
ROBERT TURNBULL 3 PM to 7 PM.

For the Regional Director, Seventh Region
IRWIN E. BANNASCH,
ROBERT M. JORDAN.

BOARD'S EXHIBIT NO. 19.

United States of America

Before the National Labor Relations Board,

Seventh Region.

In the Matter of— PACKARD MOTOR CAR COMPANY and FOREMAN'S ASSOCIATION OF AMERICA	Case No. VII-R-1279.

Report on Consent Election.

Pursuant to the Agreement for Consent Election entered into by the parties in the above-entitled case, the undersigned reports that an election by secret ballot has been conducted on February 24, 1943, with the results set forth below:

Total on eligibility list	693
Total ballots cast	631
Total ballots challenged	130
Total blank ballots	0
Total void ballots	13
Total valid votes counted	488
Votes cast for Foreman's Association of America	486
Votes cast against above union	2
Votes cast for	...
Votes cast for (neither) (none)	...

Board's Exhibit No. 20

No Objections to the conduct of the election or to a determination of representatives based on the results thereof have been filed within the prescribed period.

The undersigned, therefore, pursuant to Section IX of the Agreement for Consent Election finds and determines that Foreman's Association of America (has) been designated and selected by a majority of the employees in the agreed unit as the exclusive bargaining representative of the employees within the unit.

/s/ FRANK H. BOWEN,
Regional Director,
National Labor Relations Board.

Dated at Detroit, Michigan, this 2nd day of March, 1943.

BOARD'S EXHIBIT NO. 20.

Department of Labor.

Washington, December 11, 1944

I hereby certify that the annexed is a true tabulation of the list of companies affected by strikes involving foremen and supervisory workers, July 1, 1943 to November, 1944 on file in the Industrial Relations Division of the Bureau of Labor Statistics.

A. F. HINRICHS,
Acting Commissioner of Labor Statistics.
(Official title)

Board's Exhibit No. 20

Office of the Secretary.

I hereby certify that A. F. Hinrichs, who signed the foregoing certificate, is now, and was at the time of signing, the Acting Commissioner of Labor Statistics and that full faith and credit should be given his certification as such.

In witness whereof, I have hereunto subscribed my name, and caused the seal of the Department of Labor to be affixed this 12th day of December one thousand nine hundred and forty-four.

(Seal)

(Name illegible)
Secretary of Labor.

U. S. Department of Labor.

Bureau of Labor Statistics.

1. List of companies affected by strikes involving foremen and supervisory workers, July 1, 1943-November, 1944:[1]

Company	1943 (July-December) Month
New York Shipbuilding Corp., Camden, N. J.	September
Republic Steel Corp., Cleveland, Ohio	October
Maryland Drydock Company, Fairfield, Md.	November
Bohn Aluminum & Brass Corp., Adrian, Mich.	December

1 All information is preliminary and may be incomplete. See note to table on page 4.

Board's Exhibit No. 20

1944
(January-
November)

Company	Month
Chrysler Corp., Detroit, Mich.	January
Monroe Coal Mining Co., Revloc, Pa.	February
Ford Motor Co., Dearborn, Mich. (Rouge Plant)	February
Northwestern Mining & Exchange Co. (Stump Creek mine), Du Bois, Pa.	March
Republic Steel Corp. (Sayreton Mine), Sayreton, Ala.	March
Koppers Coal Division, Stotesbury, W. Va.	March
C. H. Mead Coal Co., East Gulf, W. Va.	March
Leckie Firecreek Coal Co., Fireco, W. Va.	April
Ford Collieries Co., Curtisville, Pa. (Frances and Berry Mines)	April
Hudson Motor Car Co. Murray Corp. (Detroit Plant) Briggs Mfg. Co. Packard Motor Car Co. Gar Wood Industries Aeronautical Products Corp.	Detroit	May
Federal Shipbuilding & Dry Dock Co., Kearny, N. J.	May
Pullman Standard Car Co., Butler, Pa.	June
Octavia Coal Mining Corp., McAndrews, Ky.	July
Ford Collieries Rochester & Pittsburgh Coal Co. Jones & Laughlin Coal Co. Imperial Coal Co. Monroe Coal Mining Co. Heisley Coal Co. Ebensburg Coal Co.	Pennsylvania	August
Dravo Corp., Wilmington, Del.	September
Bethlehem Steel Company (Atlantic & Simpson Yards), East Boston, Mass.	September
Wright Aeronautical Co., Paterson, E. Paterson, Woodridge & Fairlawn, N. J.	September

Board's Exhibit No. 20

Company		1944 (January-November) Month
Hitchman Coal Co.	)	
Kelly Creek Coal Co.	)	
Valley Camp Coal Co.	)	
Pursglove Coal Co.	)	
Brock, Inc.	)	
Davis & Wilson Coal Co.	)	
Cannelton Coal Co.	)	
Christopher Mining Co.	)	
Eastern Gas & Fuel Co.	)	
(Koppers Division)	)	
Consolidation Coal Co.	)	
C. H. Mead Coal Co.	)	
River Seam Coal Co.	)	West Virginia
Leccony Smokeless Fuel Co.	)	
Wyoming Coal Co.	)	
Crab Orchard Improvement Co.	)	
Lillybrook Coal Co.	)	.....September
D. H. Pritchard Contracting Co.	)	
Minds Coal Mining Co.	)	
Virginia & Pittsburgh Coal & Coke Co.	)	
Wyatt Coal Co.	)	
Raleigh Wyoming Mining Co.	)	
Industrial Collieries Corp.	)	
Glendale Gas & Coal Co.	)	
Louise Coal Co.	)	
Jamison Coal & Coke Co.	)	
Pacific Coal Co.	)	
Eastern Coal Corp.	) Kentucky	
Octavia Mining Co.	)	
Springfield Coal Co.	)	
Hillman Coal & Coke Co.	)	
Republic Iron & Steel Co.	) Pennsylvania	
Consolidation Coal Co.	)	
Pennsylvania Coal & Coke Co.	)	
Rochester & Pittsburgh Coal Co.	)	

Board's Exhibit No. 20

Company	1944 (January-November) Month
Jones & Laughlin Co., California, Vestaburg & Denbo, Pa.	October
Wright Aeronautical Co., Woodridge & Paterson, N. J.	November

2. The following unions were involved in strikes of foremen and supervisory workers, July 1, 1943-November 1944:

The Foremen's Association of America, Independent

United Clerical, Technical and Supervisory Employees Union of the Mining Industry, Dist. 50, UMWA.

Marine & Shipbuilding Workers of America, C. I. O.

The following unaffiliated local clubs and associations:

Leading Men's Organizing Committee—New Jersey

Ordnance Department Foremen's Club—Pennsylvania

Working Leaders and Leadingmen—Delaware

Wright Aircraft Supervisor's Association — New Jersey

3. Strikes Involving Foremen and Supervisory Workers, July 1, 1943—November 1944.[1]

Year and Month	Number of strikes	Number of workers involved	—Man-days idle—by major issues— Recognition	Other—but recognition a factor	Other	Man-days idle—Totals
1943 (July-Dec.)						
September	1	14		35		35
October	1	537	875			875
November	1	2,150	2,375			2,375
December	1	30		180		180
Totals	4	2,731	3,250	215		3,465
1944 (Jan.-Nov.)						
January	1	1,107	4,552			4,552
February	2	1,336		833	1,066	1,899
March	4	2,428	13,039	3,913	1,424	18,376
April	2	1,080	7,760			7,760
May	2	54,876	341,890	412		342,302
June	1	600			1,200	1,200
July	1	290	580			580
August	1	8,650	72,685			72,685
September	4	35,296	138,928	2,500		141,428
October	1	2,357		9,374		9,374
November	1	23,000	69,000			69,000
Totals	20	131,020	648,434	17,032	3,690	669,156

[1] The figures are only partially complete, including the strikes involving supervisory workers discovered through a preliminary check of Bureau records for the period.

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749458
Supr. Ct.

Vol. III

TRANSCRIPT OF RECORD

(Pages 1321 to 2129)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 658

PACKARD MOTOR CAR COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 30, 1946.

CERTIORARI GRANTED DECEMBER 9, 1946.

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BOARD'S EXHIBIT NO. 21.

United States of America

National Labor Relations Board

In the Matter of— PACKARD MOTOR CAR COMPANY and FOREMAN'S ASSOCIATION OF AMERICA (Independent)	Case No. 7-R-1884.

Report on Investigation of Interest of Contending Labor Organizations.

The undersigned agent of the National Labor Relations Board has investigated the extent of the interest of each labor organization claiming an interest in the above-entitled case. The results of this investigation are set forth below.

1. There Are No Labor Organizations Claiming an Interest by Virtue of Existing or Recently Expired Contracts Covering Employees in the Unit Petitioned for.

2. The Following Organizations Were Requested in Writing to Submit Representation Evidence, If Any, But Have Failed to Do So:

Name and Affiliation of Labor Organization	Date of Request
None	

3. Turnover: The approximate rate of turnover within the bargaining unit during the -month period preceding was per month.

Board's Exhibit No. 21

4. Number and Currency of Designations Submitted by Petitioner:

(a) Number of employees in unit petitioned for 1106

(b) Type of designation submitted..... Dues receipts

(c) Number of designations submitted.. 868

(d) Number of designations by age groups:

Dues paid through July, 1944.....	1
" " " Aug., 1944.....	72
" " " Sept., 1944.....	278
" " " Oct., 1944.....	75
" " " Nov., 1944.....	45
" " " Dec., 1944.....	394
" " " Jan., 1945.....	3

5. Remarks:

Of the 868 dues receipts submitted, 739 bore the names of persons appearing on the Company's payroll dated December 2, 1944; 84 show dues paid by general foremen, 444 by foremen, 184 by asst. foremen, and 27 by special assignment employees. The Company's payroll lists 125 general foremen, 643 foremen, 273 asst. foremen, and 65 special assignment employees.

RUTH GREENBERG,
Field Examiner.

Date: December 8, 1944.

PETITIONER'S EXHIBIT NO. 1.

Agreement Between Foreman's Association of America (Ford Chapter No. 1) and the Ford Motor Company.

May 9th, 1944.

Foreman's Association of America

National Office
515 Barlum Tower
Detroit 26, Michigan
CAdillac 2828

Robert H. Keys
President

William Yallance
Vice-President

Elmer Reno
Secretary-Treasurer

Harold Kelly
Membership Director

Foreman's Association of America

Ford Chapter No. 1
5746 Schaefer Road
Dearborn, Michigan
Phones: CEdar 1311-1312

W. G. Elliott
President

R. Ray
1st Vice-President

G. Kellogg
2nd Vice-President

T. Bonaventura
Secretary-Treasurer

Petitioner's Exhibit No. 1

Ford Motor Company, a Delaware corporation of Dearborn, Michigan, hereinafter known as the Company, as employer, and the Foreman's Association of America, Chapter No. 1, a voluntary association, of Dearborn Michigan, hereinafter known as the Association, as representative of the supervisory employees covered by this Agreement, agree as follows:

1. (a) The Company recognizes the Association for the duration of this Agreement as bargaining agent for all foremen as defined and limited below, who are members of the Association and employed by the Company in the Rouge, Willow Run, Lincoln, Highland Park, and suburban plants of the Company in the Detroit area.

(b) If and when the Association shows conclusive proof that a majority of the foremen in any of the Company's other plants or branches within the United States are members of the Association, this Agreement shall be extended to such branch or plant; to the extent that the provisions of this Agreement are not properly applicable to such branch or plant, the parties will negotiate supplementary agreements.

2. (a) The Association will not affiliate with any other local or national union or association other than the Foreman's Association of America, independent. Violation of this provision will give the Company the right to terminate this Agreement. Failure of the Company to terminate this Agreement by reason of violation shall not constitute a waiver of its right under this provision.

(b) The following classifications of employees shall be excluded from this Agreement and from membership, active or otherwise, in the Association: all non-supervisory employees of the Company; building superintendents, shift superintendents, assistant superintendents, and all superintendents or higher supervisory, administrative, or executive personnel of the Company; supervisory employees in the Administration Building, Rotunda and the executive and administrative offices at Gate 4, (except those supervising the work of building service and maintenance em-

ployees), and supervisory employees in other buildings, plants and branches, supervising employees doing work which corresponds to that done in the Administration Building and Rotunda and executive and administrative offices at Gate 4, and supervisory employees in the Employment, Pay Roll, Labor Relations, Plant Protection, and Medical Departments, and all other employees except foremen. In the event any employee now within the classifications covered by this Agreement is demoted, promoted, or transferred to a classification not covered by this Agreement, the Association will within 30 days of the signing of the new classification slip, terminate the employee's membership in the Association.

3. (a) The term "foreman" shall be deemed to refer to employees classified as foremen whose principal duties are to supervise, direct and/or co-ordinate the work of other employees, and such other classifications as may from time to time be agreed upon between the Association and the Company.

(b) For the purpose of this Agreement, the term "Foreman" shall be deemed to include the classification of employees to be known as "specialty foremen," as hereinafter defined; employees above the classification of fire inspector and below the classification of chief in the Fire Department; and supervisory employees below the grade of shift superintendent in the Power and Construction Department.

(c) For the purpose of this Agreement the term "foreman" shall be deemed to include licensed personnel on Great Lakes vessels operated by the Company, other than captains and radio operators; provided, however, that the provisions of this Agreement relating to classifications, rates, seniority, representation, grievances, and grievance procedure, shall not be applicable to such licensed personnel. Negotiations for an agreement to cover any or all of the foregoing subjects shall be conducted with representatives of the Company by Association representatives selected from among such personnel, and any agreement

reached shall provide that only representatives selected from among such personnel shall represent them in presenting and disposing of grievances, it being understood, however, that such representatives may call upon officers of the Association for assistance and advice.

4. (a) The right to hire and to maintain order and efficiency belongs solely to the Company.

(b) In matters of promoting or demoting (except in disciplinary cases) the Company shall have the sole right to determine whom to promote or demote, and shall not be limited to any of its buildings, areas, or plant; provided, however, that any promotion, demotion, transfer, discharge, etc., deemed to be unfair and in violation of the provisions of this Agreement may be reviewed and determined through the grievance procedure as hereinafter provided.

(c) The right to discipline for cause belongs solely to the Company; provided, however, that disciplinary action taken against a foreman shall not be unreasonable, and if deemed to be unreasonable it may be reviewed and determined through the grievance procedure as hereinafter provided.

(d) The Association recognizes other rights and responsibilities belonging solely to the Company, prominent among which, but by no means wholly inclusive, are the rights to decide the number and location of plants, amount of supervision necessary, machine and tool equipment, products to be manufactured, methods of manufacture, schedules of production, processes of manufacturing or assembling, together with all designing, engineering and the control of raw materials, semi-manufactured and finished parts which may be incorporated in the products manufactured.

(e) Any of the rights, powers or authority the Company had prior to the signing of this Agreement are retained by the Company, except those specifically abridged, delegated, granted or modified by this Agreement, and any supplementary agreements that may hereafter be made.

Petitioner's Exhibit No. 1

5. For the purpose of effective and prompt administration of the grievance procedure provided for in this Agreement, the Association may have representation in accordance with the following provisions:

(a) For the purpose of Sections 5, 6 and 7, foremen shall be divided into three Levels, as follows:

Level 1—General Foremen
Assistant General Foremen
General Shift Foremen

Level 2—Division Foremen
Division Shift Foremen

Level 3—Job Foremen

(b) In the Rouge Plant (including all buildings and areas of the Rouge Plant proper), there shall be three Plant-wide Representatives, one to be selected from the foremen in that plant in each Level by the Association. There shall also be one Chairman on each shift (unless the parties agree that the number of foremen working on the shift does not justify a Chairman) to be selected from the foremen in the respective buildings or areas, for each of 16 areas in the plant to be mutually agreed upon by the Company and the Association.

(c) In the Willow Run and suburban plants, representation shall be as follows: There shall be three Plant-wide Representatives for the entire Willow Run and suburban plants, one to be selected from the foremen in such plants in each Level by the Association. There shall also be seven Chairmen from the Willow Run Plant, three each from the day and afternoon shifts, one to be selected from the foremen in each of three areas to be mutually agreed upon, and one from the midnight shift. There shall be one Chairman to be selected from the foremen in the suburban plants.

(d) In the Highland Park and Lincoln Plants, representation at each shall be as follows: There shall be three Plant-wide Representatives, one to be selected from the foremen in the plant in each Level by the Association.

There shall also be one Chairman on each shift, to be selected from among the foremen in the plant.

6. (a) Plant-wide Representatives shall be permitted to devote as much time as is necessary to the performance of their functions under this Agreement; where the volume of such work justifies it, a Representative shall be permitted to devote full time to the performance of such functions.

(b) A Chairman will perform his regular work for the Company, but shall be permitted to leave his work when necessary to perform his functions under this Agreement; provided that he notifies his department head at the time he leaves his regular work and of the purpose of his leaving, and reports upon his return to his work; and provided further, that he shall not leave his regular work during the first and last hours of his regular shift. A Chairman shall not leave the building or area, as the case may be, where he works, without approval of his Superintendent. The privilege of Chairmen to leave their work without loss of time shall not be abused. Abuse of this privilege shall be considered a violation of this Subsection and shall be proper grounds for discipline by the Company, subject to Section 4 (c).

(c) The Company will name a committee of three representatives who shall be known as the Company Committee with authority to render decisions binding upon the Company on matters within its jurisdiction as set forth in this Agreement. The Association will name a committee of three representatives from among the foremen, one to be selected from each Level, who shall be known as the Association Committee with authority to render decisions binding on the Association on matters within its jurisdiction as set forth in this Agreement. The Company Committee and the Association Committee shall constitute a Joint Committee. A person who has handled a grievance at a prior stage shall be disqualified from acting as a member of either Committee when such grievance comes before the Joint Committee, and in such case, an alternate (from the

same Level in the case of Association alternates) shall be appointed to sit in his stead by the appropriate Committee Chairman. The Joint Committee shall meet once each two weeks when there is business to come before it. The Chairmen of the Company and the Association Committees may jointly call a special meeting when necessary. A national representative of the Foreman's Association of America and/or a representative of the Company, other than a committee member, may be present at any meeting of the Joint Committee, but shall not have a vote.

7. (a) Where a foreman covered by this Agreement believes that there has been a violation thereof adversely affecting him, he shall in the first instance attempt to adjust the matter within his department.

(b) If the matter is not thus satisfactorily adjusted it shall be considered a grievance, and may be submitted to the foremen's area building or plant Superintendent, as the case may be. The foreman may call upon his Chairman to assist in the adjustment of such grievance, and if so, the Chairman shall reduce the grievance to writing and submit it, in triplicate, signed by the foreman, to the Superintendent. The Superintendent shall make written disposition of the grievance within two full working days of its submission to him. Copy of such disposition shall be furnished to the Chairman and the Foreman's Personnel Office.

(c) In the event that the Superintendent's disposition is not satisfactory, such written grievance may be referred to a Plant-wide Representative for negotiation with the Superintendent or with the Foreman's Personnel Office, at which time the Chairman shall withdraw. The Plant-wide Representative may refer the grievance in writing to the Foreman's Personnel Office within four full working days after the receipt by the Chairman of a copy of the Superintendent's decision, and the Foreman's Personnel Office shall make written disposition thereof within two full working days after receipt of the grievance.

(d) Where a decision on whether or not a foreman is to

be disciplined is to be made in the first instance by a District Labor Relations Office, the foreman shall be given an opportunity to appear and make a statement before final action is taken, and shall have the right to be represented by his Chairman if he so desires at the time of such appearance. In the event he believes such disciplinary action, if taken, to be in violation of this Agreement, it may be considered a grievance, reduced to writing by the Chairman and referred to a Plant-wide Representative for negotiation with the Foreman's Personnel Office, at which time the Chairman shall withdraw. A copy of any statement taken by the District Labor Relations Office, from the foreman disciplined, will be made available to the Plant-wide Representative, upon his request to the Foreman's Personnel Office. Any such statement shall not be used by the Representative or any other Association member for any purpose other than the processing of the particular grievance. The Plant-wide Representative may refer the grievance in writing to the Foreman's Personnel Office within two full working days of the receipt by the Chairman of the copy of the District Labor Relations Office decision, and the Foreman's Personnel Office shall make written disposition thereof within two full working days after receipt of the grievance. The foregoing shall not be construed as taking away the Company's right to suspend any foreman pending decision by the District Labor Relations Office.

(e) Where a decision on whether or not a foreman is to be disciplined is to be made in the first instance by the Foreman's Personnel Office, the foreman shall be given an opportunity to appear and make a statement before final action is taken and shall have a right if he so desires, to be represented by a Plant-wide Representative at the time of such appearance. In the event the foreman believes such disciplinary action, if taken, to be in violation of this Agreement, it may be considered a grievance, and an appeal to the Joint Committee may be taken as hereinafter provided. The foregoing shall not be construed as taking away the Company's right to suspend any foreman pending decision by the Foreman's Personnel Office.

(f) All decisions by a District Labor Relations Office and the Foreman's Personnel Office, in cases where an Association Representative or Chairman has participated, shall be in writing, and a copy shall be furnished to the Representative or Chairman who participated.

(g) In no case shall a grievance be handled by a Plant-wide Representative in a different Level than the foreman having the grievance; provided, however, that when negotiating a grievance with the Superintendent or the Foreman's Personnel Office the Plant-wide Representatives, if they so desire, may act as a committee, but the Plant-wide Representative selected from the same Level as the foreman with the grievance shall act as spokesman or Chairman of said committee during negotiations of the instant case.

(h) The decisions of the Foreman's Personnel Office, as provided for in the foregoing subsections, may be appealed in writing to the Joint Committee. The notice of appeal shall be filed in the Foreman's Personnel Office within five working days after receipt by the Association's Representative of a written copy of the decision of the Foreman's Personnel Office. The appeal shall be considered at the next regular meeting of the Joint Committee which is at least one week after the filing of the appeal. The Joint Committee shall dispose of such appeals within 21 days after the filing thereof unless the time is extended by mutual agreement.

(i) If the Joint Committee, by a majority vote, does not dispose of a case within ten working days after first considering it, either Committee may ask for an impartial person to meet with the Joint Committee and act as Temporary Chairman for the purpose of reviewing the case and casting the deciding vote. A request from either Committee shall be addressed to the Head of the Company's Labor Relations Department and the National President of the Foreman's Association of America. The Head of the Labor Relations Department and the National President will thereupon consider and decide within two

weeks of the date of the request whether a Temporary Chairman shall be called in, and if they so decide they shall within one week agree upon the person who is to act as such and the date for reviewing the case.

(j) In the event the Head of the Labor Relations Department and the National President cannot agree on the impartial person who shall act as Temporary Chairman within the prescribed time limit, the grievance procedure shall be considered exhausted.

(k) Any foreman suspended while his grievance is being reviewed through the grievance procedure and pending decision by the Foreman's Personnel Office or the Joint Committee shall be reimbursed by the Company for the time he lost if the decision of the Foreman's Personnel Office or the Joint Committee is in his favor unless otherwise agreed.

8. A foreman's seniority shall be measured by his length of service with the Company as a foreman, subject to the following provisions:

(a) Seniority shall be computed by classification, and seniority in any classification shall be measured by the periods during which the foreman was so classified, provided that:

(1) A foreman shall accumulate seniority in all lower classifications during periods in which he is classified in a higher classification.

(2) Seniority for the period prior to November 5, 1942, shall be accumulated and credited to the classification held by the foreman on November 5, 1942, (or if he was not classified as of that date, then his first foreman's classification subsequent thereto) and to all lower classifications.

(b) A foreman's seniority shall be deemed broken:

(1) By a quit (provided that as to the period prior to November 5, 1942, it must be established that he in fact voluntarily quit).

(2) (During the period prior to November 5, 1942), by a break in his employment in excess of four years.

(3) By a continuous period of four years during which he is not classified as a foreman (provided that special consideration shall be given to foremen who were employed on operations interrupted by reason of conversion to war production).

(4) By a discharge which (for the period subsequent to the date of this Agreement) is not reversed through the grievance procedure.

(5) (For the period subsequent to November 5, 1942), by a demotion for any reason other than a reduction in force or other circumstances beyond his and the Company's control, provided that when such demotion is to a lower foreman's classification, only his seniority in all higher foreman's classification shall be broken.

(6) (For the period subsequent to the date of this Agreement), if he fails to report for work within five days after notice to report has been sent to his last known address according to the Company's records, and fails to give a satisfactory reason for his failure to report.

(7) (For the period subsequent to the date of this Agreemen), if final settlement is made with a foreman with approval of the Association (if he is a member) for total disability.

(c) A foreman shall accumulate no seniority during his probationary period, but if he continues as a foreman thereafter, his seniority shall commence as of the date he was classified as a foreman.

(d) A foreman shall have all his seniority in the department in which he is working.

9. Within 90 days after the signing of this Agreement and every 90 days thereafter, the Company will furnish to the Association up-to-date lists showing the seniority of the foremen in each department, and a foreman shall have 30 days after receipt by the Association of the list

for his department to file written claims of error in the list. Any claim based upon alleged error in the Company's records must be supported by satisfactory evidence. A foreman who does not file a written claim of error within the time above limited shall not thereafter have the right to question his seniority as shown on such list.

10. (a) In matters of promotion and demotion the determining factors shall be ability and seniority. When ability is considered to be equal, seniority shall govern promotions and demotions. The final determination shall be ability. If the Company's determination of this factor shall be deemed to be unreasonable any claimed violations of this provision may be reviewed and determined through the grievance procedure hereinbefore provided.

(b) Where, under Subsection (a) of this section, seniority is the governing factor in a promotion, the foreman in the department with the greatest seniority in the next lowest classification will receive the preference.

(c) Where, under Subsection (a) of this section, seniority is the governing factor in a demotion, the foreman in the department affected with the least seniority in the classification affected will receive the demotion.

(d) Where, under Subsection (a) of this section, seniority is the governing factor in reducing the number of foremen in any department:

(1) Only seniority of those within the department will be considered;

(2) In any classification, only seniority in that classification shall be considered;

(3) A foreman reduced from any classification above the rank of division shift foreman shall be demoted to the next lower classification within the department, provided that the Company may transfer any foreman above the rank of job foreman, who would otherwise be demoted, to another department where there is an opening in his classification which he is qualified to fill by occupational experience as

a foreman and may return such foreman to the job he was thus transferred from when it reopens.

(e) When openings in a department where such a reduction has taken place exist by reason of an increase in the department, foremen reduced in classification pursuant to Section 10 (d) and still remaining as foremen in the department, or on the Availability List from that department, shall be increased in classification in reverse order of their reduction in classification.

(f) In the case of discontinuance of a department all foremen on the layout shall go on the Availability List hereinafter provided for; provided, however, where the department is being discontinued in the course of the combination of two or more departments the combined departments shall be treated as one department and the procedure set forth in Subsection 10 (d) shall be followed.

11. (a) The Company will maintain in the Foreman's Personnel Office a record of employees who have had service as foremen in the plants covered by this Agreement and retain seniority as foremen, which shall be known as the Availability List.

(b) Foremen removed from the layouts due to a reduction in the number of foremen in a department or the discontinuance of a department shall be placed on the Availability List.

(c) Where an opening in a foremanship in one of the plants covered by this Agreement exists, the employees appearing on the Availability List with similar occupational experience as foremen shall be considered in the order of their seniority in the classification in which the opening exists for the purpose of filling such opening; provided that:

(1) Employees who have served as foremen in the plant in which the opening exists shall receive first consideration for such opening in seniority order.

(2) Employees who came to the Availability List from

the department in which the opening exists shall receive first consideration for such opening in seniority order.

(3) The Company may transfer a foreman to any other department where there is an opening in his classification, provided the opening cannot be filled from the Availability List, the foreman has had the proper occupational experience, and such transfer does not reduce the total number of openings within the plants covered by this Agreement.

(d) A foreman who has filled an opening from the Availability List shall be removed from such list entirely.

(e) The Availability List shall be open to inspection by Plant-wide Representatives.

12. Notwithstanding their positions on the seniority list, the Chairmen shall be retained in their respective areas as foremen as long as there is a job available which they can perform, provided one of their constituents is at work. Plant-wide Representatives shall be retained as long as they are acting in that capacity. When they are no longer acting in that capacity they shall be returned to their old jobs or a job of similar work, classification, and rate of pay as they had prior to assuming their duties as Representatives. Chairmen and Plant-wide Representatives will receive the benefits of any increases in pay that may be negotiated for their classifications.

13. When a foreman's absence from work is due solely to disability resulting from sickness or injury and due proof of the disability is given to the Company, he will be returned to work which he can perform in accordance with his seniority as if he had not suffered a disability. If the disposition made of any such case is not satisfactory, the matter may be reviewed and determined through the grievance procedure.

14. For the protection of employees who are handicapped by major physical disabilities, they may be exempted from the operation of the seniority provisions of this Agreement, in the event of lay-off, at the discretion of the Company.

15. Any foreman who has been incapacitated at his regular work by injury or compensable occupational disease while employed by the Company may be employed in other work in the plant which he can do without regard to any seniority provisions in this Agreement.

16. No foreman shall be transferred to a job for the sole purpose of affecting his seniority.

17. (a) The length of a foreman's service with the Armed Forces of the United States, or enforced military training shall be included in the computation of his length of service with the Company to determine his status on the seniority list. Any foreman actively serving in the Armed Forces of the United States, or absent because of enforced military training shall not lose his seniority status, but upon termination of such service shall be re-employed by the Company in accordance with the provisions of the Selective Service Acts, provided he reports for work within 60 days after his discharge. This paragraph shall cover all foremen with or without seniority.

(b) A foreman requesting leave of absence shall make application to his department head on a form provided for that purpose. An approved copy of the official leave of absence slip shall be furnished to the foreman before such leave becomes effective.

(c) Leave of absence may be granted for personal reasons for a period not to exceed 90 days upon application by the foreman subject to this Agreement and approval by the Company, if the services of the foreman are not immediately required and there are foremen available at the plant capable of doing his work; provided, that the foreman shall not work on any other position during his leave of absence unless mutually agreed to by the Company and the Association.

(d) A foreman who may become ill and whose claim of illness is supported by satisfactory evidence shall be granted sick leave of absence automatically.

(e) Leaves of absence may be extended upon the approval of the Employment Department of the Company.

(f) Seniority shall accumulate during any approved leave of absence.

(g) A foreman elected to an Association position or office, or who is selected by the Association to do work which takes him from his employment with the Company, upon the written request of the Association, shall receive a temporary leave of absence for the period of his service with the Association and upon his return shall be reinstated at available work generally similar to that in which he was engaged last prior to his leave of absence; and his seniority shall accumulate throughout the period of his leave of absence. Application for such leave of absence shall be made and granted yearly.

18. In the resumption of civilian production, it is agreed that notwithstanding any of the other provisions of this Agreement, the Company may return any foreman to the department or job from which he was transferred to war work, in accordance with the following provisions:

(a) Where the Company requires a foreman to return to his former civilian production job or department, his rate of pay shall not be reduced for a period of six months following the date of such transfer, or until the war job from which he was transferred is discontinued, whichever occurs first, at which time the foreman's rate shall be adjusted in accordance with his classification on the lay-out for his department.

(b) A foreman offered a transfer, but not required to transfer back to his former civilian production job or department prior to the discontinuance of his war production job, who declines such transfer, shall forfeit any claim to be returned to such civilian production job or department when his war production job is discontinued.

(c) When a foreman's war production job is discontinued the Company will endeavor to return such foreman to his former civilian production job or department, pro-

vided he has not previously declined an opportunity to transfer to such job.

19. A foreman having foreman seniority, who is transferred or promoted, and an employee who is promoted to a foremanship, shall be considered as being on trial for his first 30 days on his new job.

20. The following provisions with respect to classifications and rates of pay shall be applicable to foremen covered by this Agreement:

(a) The schedule of rates of pay for the various classifications of foremen shall be as follows:

Classification	Differential
Job Foreman	25c
Division Shift Foreman	30c
Division Foreman	40c
General Shift Foreman	50c
Assistant General Foreman	55c
General Foreman	60c

The differential indicates the minimum amount per hour which a foreman shall be paid over a rate base as follows:

(1) The rate base in the case of the lowest classification of foremen in a division or department shall be the weighted average of the negotiated rates of the 25% of the employees under the direct supervision of the foreman who are on the highest negotiated rates. For this purpose, the maximum of spread hourly rates shall be used.

(2) The rate base used for a foreman in a higher classification shall be that of the foreman under his supervision with the highest rate base.

(3) The agreed rates for foremen as per schedule, Section 20 (a) will be minimum rates paid by the Company and higher rates may be paid without changing the classification of foremen, upon proper approval.

(4) In no case shall a foreman receive less than a 15-cent hourly differential over any non-supervisory employee under his supervision.

(b) (1) The "specialty foreman" classification is defined to cover a foreman working on actual development work in a department or building under assignment by a Superintendent, and who regularly supervises and coordinates work but not a regular group of employees.

(2) The rates for this classification shall be subject to negotiations within 14 days after the signing of this Agreement.

(3) The question of seniority of specialty foremen shall be subject to negotiations within 14 days after the signing of this Agreement, and the seniority provisions of this Agreement shall not be applicable to specialty foremen except to such extent as may be hereafter agreed.

(c) (1) The classifications of foremen shall take into consideration the nature of the work, the degree of responsibility carried, the supervisory structure of the department or division involved, and the number of employees supervised.

(2) The classification and rate schedule provided for in Section 20 (a) shall not be applicable to the Fire Department supervisory employees. The rates for their classifications shall be subject to negotiations within 14 days after the signing of this Agreement.

(d) (1) An employee promoted to a job foreman classification will receive a rate representing the 25c per hour differential over his base rate as provided for in Section 20 (a) within 60 days of the date that his change of classification was approved by the Foreman's Personnel Office.

(2) A "Recommendation for Change of Classification" Slip (Form 152) shall immediately be transmitted to the Foreman's Personnel Office when an employee is assigned to a job foremanship or a foreman is reclassified, and the Foreman's Personnel Office shall approve or disapprove the change in classification within two working days after receiving the "Recommendation."

(e) Unless a foreman is transferred, redetermination of his rate base by reason of change in the rate of personnel

supervised shall not be had for the purpose of increasing or decreasing his rate oftener than once every three months.

(f) A foreman who is transferred from one job to another job carrying a lower rate base may have his rate reduced accordingly except as provided in Section 20 (g).

(g) A foreman who is skilled in a specific line of work and who is placed on a job with a lower rate base for the purpose of instruction or development of such job shall retain his original rate until such time as he is offered a transfer back to the job which he held at the time of transfer or another job having a similar rate base. In the event he declines such transfer and the Company acquiesces, he may be reduced to the rate for the new job.

(h) All hourly rated foremen will be paid overtime, shift bonuses, call-in pay and vacation or vacation pay in lieu thereof in the same manner as are the hourly rated employees under their supervision as of the date of this Agreement.

(i) All salaried foremen will be granted overtime pay as per the schedule approved by the Salary Stabilization Unit of the Bureau of Internal Revenue effective April 1st, 1943.

(j) No foreman shall receive a reduction in pay by reason of the rate and classification schedule set forth in this section so long as he continues on his present job.

(k) The provisions of this Agreement affecting compensation to foremen, to the extent that they effect a change, will be put into effect as of the date of the signing of this Agreement if they are approved by the War Labor Board and/or the Salary Stabilization Unit of the Bureau of Internal Revenue, provided that this shall not be construed to prejudice any claims under Section 23 hereof. Appropriate approval will be applied for at once.

21. Foremen shall not be required to do work similar to that done by the non-supervisory employees they super-

vise, except that they shall continue to do such work as it has been the practice for foremen to perform on their jobs in their departments. In times of emergency, including work stoppages for any cause, the Company may require its foremen to do such work as is necessary or appropriate to protect and preserve its plant and equipment; and where circumstances permit, shall make reasonable efforts to keep production going. Whenever it becomes necessary to develop or perfect a new mechanical process or job, it is recognized that the Company may use foremen for such purpose.

22. In plants or areas covered by this Agreement, the Company will erect Bulletin Boards in suitable places mutually agreed upon to be used solely by the Association for posting Association notices. Notices shall be restricted to the following types:

(a) Notices of meetings of the Association.

(b) Notices of its elections.

(c) Notices of its appointments to offices and the results of its elections.

(d) Notices of its Social, Educational or Recreational affairs.

Such notices and announcements shall contain nothing political or controversial or reflecting upon the Company. Additional notices may be posted by mutual consent.

23. A foreman whose classification has not as yet been determined to the satisfaction of both the Company and the Association under the Wage and Classification Agreement effective November 5th, 1942 may reopen his case through the grievance procedure hereinbefore provided, and if decided in favor of the foreman his classification and rate of pay shall be retroactive to the date said foreman became entitled thereto, but not beyond the date of November 5th, 1942.

24. Where the provisions of this Agreement are not properly applicable to any supervisory employees who are eligible for membership in the Association and not excluded by this Agreement the Company representatives and the Association representatives will within 14 days of the signing of this Agreement negotiate a classification and rate schedule that is properly applicable to such employees.

25. (a) In case of continued absence due to illness, salaried foremen shall be entitled to one month's full pay and thereafter shall be entitled to one-half pay for two additional months. This provision may be open to negotiation by either party at any time.

(b) All salaried foremen will be granted a vacation as per the salary roll vacation policy now approved and in effect.

26. Upon the termination of services of a salaried foreman by the Company, the foreman will receive two weeks' regular pay after the date of termination of services. In addition he will receive any overtime pay accrued. If he has not had his vacation he will receive pay in lieu thereof.

27. In the event that any of the provisions of this Agreement shall be or become legally invalid or unenforceable, such invalidity or unenforceability shall not affect the remainder of the provisions thereof.

28. Within six months of the date of the signing of this Agreement, and each six months thereafter either party may notify the other of its desire to amend this Agreement, in which event the notice shall set forth the nature of the amendment or amendments desired, and within 30 days of the date of notice representatives of both parties will meet and endeavor to negotiate mutually satisfactory amendments to this Agreement. Any amendment or supplemental agreements shall become and be a part of this Agreement.

Petitioner's Exhibit No. 1

29. This Agreement may be terminated by either party at the expiration of one year from the date hereof, and yearly thereafter. Termination shall be effective 30 days after notice of termination has been sent to the other party by registered mail.

30. This Agreement shall remain in full force and effect for one year immediately and continuously following May 9th, 1944, and shall continue in full force and effect from year to year unless amended or terminated as hereinabove provided.

31. In witness hereof Ford Motor Company and Foreman's Association of America, Chapter No. 1 hereunto set their hands and seals on May 9th, 1944, by their representatives hereunto duly, respectively, authorized.

FORD MOTOR COMPANY,

By RAYMOND R. RAUSCH,
Member Board of Directors.

Negotiating Committee,
STEWART EVANS,
ADOLPH J. FUCHS,
HARRY A. MACK,
IRVING L. PIERCE.

FOREMAN'S ASSOCIATION OF AMERICA,

By ROBERT H. KEYS,
National President.

Negotiating Committee
E. J. EDWARDS,
W. ALLEN NELSON,
CARL BROWN,
H. C. HODGES.

PETITIONER'S EXHIBIT NO. 2.

Constitution of the Foreman's Association of America and Laws Governing Chapters.

Article I—Name.

This voluntary association of supervisory employees shall be known as Foreman's Association of America.

Article II—Purposes.

The purposes of the Association shall be to encourage social acquaintances among supervisory employees, to confer and act upon measures for the protection and advancement of the economic welfare of supervisory employees through collective bargaining, and to encourage study, conference, and wider learning among supervisory employees to the end that they may improve in the supervision of men and women in industry.

Article III—Constitution.

The Constitution shall be the Supreme Law of the Foreman's Association of America.

Article IV—Affiliation.

The Foreman's Association of America shall not become a subordinate affiliate of any labor organization, and shall not become an affiliate of any manufacturers' association.

Article V—Headquarters.

The headquarters of the Association shall be located in the Metropolitan District of Detroit in the state of Michigan.

Article VI—Membership.

Section 1. Membership in the Association may be obtained and held only through membership in a Chapter thereof.

(Petitioner's Exhibit No. 2

Section 2. Any employee of good moral character, whose duties require the supervision of other employees, or who directs work, who may or may not supervise other employees, and who is not a member of any other organization recognized by his employer as representing him in collective bargaining, may become a member of the Association after having been employed as a supervisory employee for a period of not less than thirty (30) days prior to the filing of application for membership, and provided that such application to a Chapter of the Association is accompanied by a membership fee.

Section 3. No supervisory employee or individual acting as negotiator in formulating employer-policy may become a member of the Foreman's Association of America.

Section 4. No person whose application for membership in the Association has been declined shall be eligible to apply for membership in any other Chapter of the Association for a period of ninety (90) days following such declination.

Section 5. No person shall be eligible for admittance to membership in more than one Chapter of the Association at the same time, but membership herein may be transferred from one Chapter of the Association to another for good cause.

Section 6. All members of the Chapters of the Association thereby become and are members of the Association.

Section 7. No person shall at any time under any circumstances be made an honorary member or Officer of the Association.

Section 8. A withdrawal card may be issued to any member whose status has been changed to disqualify him from membership except in the case of suspension or expulsion.

Section 9. No person shall be disqualified for membership on account of race, religion, nationality, sex or political views or opinions.

Section 10. Any member in good standing at the time

of entering the armed forces shall be considered in good standing during interim of his absence, and upon presentation of an honorable discharge, or its equivalent, shall, upon payment of the current month's dues, be considered an active member of his chapter, provided application is made within one year of the date of such discharge.

Section 11. Any member elected or appointed to a full time position in the Association shall retain membership in his original chapter during the tenure of such office.

Section 12. The original application for membership signed by each member shall be forwarded to and be retained by the national office for its record. An official receipt shall be given to each member for all monies paid.

Section 13. Any Chapter suspending or expelling any member for cause shall notify the National Secretary-Treasurer, and the latter shall notify all chapters forthwith. A person who has been suspended or expelled by any chapter shall not be eligible for membership in any chapter until all claims or charges against such person have been satisfactorily settled with the Chapter suspending or expelling, and written notice to this effect furnished the Chapter to which such person seeks admission or readmission.

Article VII—Chapters.

Section 1. The Charter is the authority under which the several Chapters shall operate.

Section 2. Upon petition of not less than ten persons qualified to be members, a provisional charter defining the limitations of their authority may be granted by the National Executive Board, or officer delegated by the National Executive Board, to do so within thirty (30) days of the filing thereof, provided said application shall be accompanied by one ($1.00) Dollar each of the membership fee, and such fees shall be two ($2.00) dollars each per charter member.

Section 3. Upon petition of the Executive Board of a chapter operating under a provisional charter, and after satisfactory investigation as to the stability of the pro-

posed chapter a permanent charter shall be granted by the National Executive Board.

Section 4. The Charter of any Chapter or Regional Organization may be revoked by the National Executive Board on good cause shown after service upon an Officer of said Chapter if he be available, or a member thereof if no Officer be available for service, of written charges, and hearing thereon not less than three (3) nor more than ten (10) days following such services, for violation of the Constitution of the Association, or the By-Laws of such Chapter or Regional Organization, or on proof that said Charter was obtained through fraud or misrepresentation, or that the true condition existing at the time of the issuance thereof, and the President of the Association may suspend or revoke a Charter on similar grounds provided his action in that regard is approved or affirmed by the National Executive Board within thirty (30) days of such revocation.

Section 5. Each Chapter shall meet at least once each month and shall have a regular meeting time and place as nearly as may be.

Section 6. Chapter and Regional Organizations shall have such By-Laws as are not inconsistent herewith.

Article VIII—Regional Organizations.

Section 1. Regions may be established and regional subordinate organizations chartered at the discretion of the National Executive Board and upon terms and conditions specified by the National Executive Board.

Section 2. Each region may have a Regional Director under the jurisdiction of the National President, and the Regional Office under the jurisdiction of the National Secretary-Treasurer, both Director and office subject to the approval of the National Executive Board. Such offices to be set up as the necessity arises.

Section 3. Regional Directors may be appointed by the National President subject to confirmation by the National Executive Board, who may be part or full-time employees.

Petitioner's Exhibit No. 2

Article IX—Dues and Assessments.

Section 1. The per capita tax and portion of membership fee to be paid by each member to the National Office shall be fixed annually in advance by the National Executive Board at least thirty (30) days prior to the holding of the Convention of this Association, and subject to approval by such Convention.

Section 2. The fee for membership in a chapter shall be two dollars ($2.00) until after the chapter has been granted a permanent charter and thereafter may be established by a chapter by-law at not less than two ($2.00) Dollars nor more than Twenty-Five ($25.00) Dollars.

Section 3. One ($1.00) Dollar of the membership fee shall be forwarded to the National Secretary-Treasurer's office at the time the membership application is reported thereto.

Section 4. The membership dues shall not be less than at the rate of one ($1.00) Dollar per month until after the Chapter has been granted a Charter and thereafter may be established by a Chapter By-Law at not less than one ($1.00) Dollar per month nor more than two ($2.00) Dollars per month.

Section 5. Membership dues are due and payable on the first day of the month or the first day of the specified period as established in the Chapter By-Laws or action of the Chapter Executive Board.

Section 6. A per capita tax of fifty (50¢) per month per member's dues collected shall be forwarded by each Chapter to the National Secretary-Treasurer's office.

Section 7. Any Chapter failing to suspend a member who is 90 days delinquent shall forward five cents per capita tax per month for each month's delinquency thereafter to the National Secretary-Treasurer's office.

Section 8. Assessments may be levied by the National Executive Board for National activities in the following manner: The National Executive Board shall have the authority to levy assessments but not in excess of one

($1.00) Dollar in any one calendar year. If further assessments are deemed necessary by the National Executive Board it shall become mandatory upon them to send a communication to all Chapters stating reasons for the assessment and asking their approval of the assessment. Such assessments shall be levied only when approved in the following manner: Each Chapter shall hold a specially called and duly advertised meeting for the purpose of considering and voting on the assessment. The total number of members in attendance at all of these meetings shall be computed, and a majority vote of this number shall determine.

Section 9. Assessments are due and payable at such time as set by the National Executive Board. All assessments levied shall be collected prior to any dues collections after the date of the assessment. A member of the Association failing to pay his assessment within thirty (30) days of the last date said assesment is due and payable shall be delinquent.

Section 10. The National Secretary-Treasurer shall keep all assessments collected for the Association in a special fund and a complete record of moneys collected and disbursed shall be made a part of the records of the Association and said record shall be available for inspection by a committee of any Chapter upon demand.

Article X—Convention and Representation.

Section 1. In each year there shall be a Convention of the Association to be convened during the month of September, the place to be designated by the preceding Convention. The date and time for convening shall be designated by the National Executive Board so that not less than seventy-five (75) days previous thereto the National Secretary-Treasurer shall issue the call thereto to the Secretary-Treasurer of each Chapter.

Section 2. Each Chapter shall have one (1) Delegate for two hundred fifty (250) members or less and one (1) additional Delegate for each two hundred fifty (250) or a major fraction thereof.

Petitioner's Exhibit No. 2

(a) Each Chapter shall have one (1) vote for the first one hundred (100) members or major fraction thereof. The votes shall be equally apportioned among the elected Delegates of each Chapter. The number of members in each Chapter for the purpose of this Article shall be determined by the average per capita taxes paid by the Chapters to the National Office for the first ten (10) months following the adjournment of the last Convention, subject to Article XV Section 5 of this Constitution.

(b) No member is eligible to serve as a Delegate from his Chapter unless he has been in good standing in the Association for a ninety (90) day period immediately preceding the date of the election of Delegates.

(c) Chapters may elect Alternate Delegates if they so desire. The number of Alternates may be less, but not more, than the number of regular Delegates. Chapters shall determine the manner and order in which an Alternate will replace a regular Delegate and shall so advise the Credentials Committee. Regular Delegates may be replaced only if recalled by their Chapter in the manner they were elected or if unable to serve.

Section 3. The Convention shall be the governing body of this voluntary Association with authority over all Officers, Subordinate Bodies, and the National Executive Board.

Section 4. The President of the Association shall call the Convention to order and shall thereupon state the number of Delegates whose credentials have been approved by the National Secretary-Treasurer and the Credentials Committee. He may preside at the sessions of the Convention or, upon the completion of the roll call of Delegates, he may call for the nomination and election by the Delegates of a Chairman and Vice-Chairman of the Convention. A Clerk of the Convention shall thereupon be nominated and elected by the Delegates. Officers and members of the National Executive Board may speak but not vote unless duly elected as Delegates.

Section 5. The National Executive Board shall select

from the credentials of the Delegates presented (not more than thirty [30] days nor less than fifteen [15] days prior to the Convention) A Constitutional Committee, A Credentials Committee, A Resolutions Committee, and the several other Committees necessary to successfully promote and execute the efficient operation of the Convention. Such Committees shall assemble at least three (3) days prior to the opening of the Convention. All Convention Committees shall have an odd number of, and not more than eleven members. Such Committees as deemed necessary by the National Executive Board shall assemble at least three days prior to the Convention.

Section 6. Copies of all resolutions, grievances and constitutional amendments to be considered by the Convention must be sent to the National Secretary-Treasurer not less than three (3) weeks prior to the date set for the convening of the Convention and he shall distribute to the members of the various Chapters copies of such resolutions, grievances or amendments.

Section 7. The National Secretary-Treasurer shall furnish all Chapters with the proper Delegate and Alternate Delegate credential forms. The original of such credential and alternate credential shall be retained by the Delegate or Alternate and the duplicate copies shall be forwarded to the National Secretary-Treasurer. No credentials shall be accepted later than five (5) days prior to the date for the convening of the Convention.

Section 8. Delegates and Alternates shall not be appointed, but shall be nominated and elected by secret ballots at meetings after each member in good standing in the Chapter has been duly sent a notice by the Secretary-Treasurer of the Chapter. These meetings to be held within forty-five (45) days of the call to the Convention by the National Secretary-Treasurer.

Section 9. Delegates or Alternates participating in the Convention as Delegates shall be compensated for any time lost from their work by their respective Chapter, subject to Section 5 of Article XIX of the Constitution.

Petitioner's Exhibit No. 2

Section 10. Delegates or Alternates participating in the Convention as Delegates shall be compensated for their expenses by the National Office, subject to Section 6 of Article XIX of the Constitution.

Article XI—Election of Officers.

Section 1. The Officers and Executive Board Members of the Association shall be elected each year by the Delegates duly accredited to and attending the Convention of the Association and shall serve until their successors are duly elected. The date of installation of officers shall be determined by the Delegates of the Convention.

Section 2. The ballot of the Delegates to the Convention on Officers and Members of the Executive Board and the Board of Trustees shall be by a written ballot and the members of the several chapters shall have the right to instruct their Delegates who shall be bound thereby for at least two ballots.

Section 3. No member shall be eligible for election to a National Office of the Association until he has been a member in continuous good standing in a Chapter for one year immediately prior to his nomination.

Article XII—Officers.

Section 1. The National Officers of the Association shall be a President, First Vice-President, Second Vice-President, Secretary-Treasurer, a Membership Director, an Executive Board and Board of Trustees.

Section 2. The Executive Board shall consist of sixteen (16) members.

Section 3. The Board of Trustees shall consist of three (3) members.

Article XIII—Duties of the National President.

Section 1. The National President shall preside at the sessions of the Convention in conformity with the provisions of the Constitution. He shall preside at the sessions

of the National Executive Board. He shall perform such other duties as are necessary to protect and advance the interests of the Association.

Section 2. The National President shall execute the instructions of the National Executive Board and have full auhority to direct the workings of the Association within the provisions of this Constitution and shall report his acts at the regular meetings of the National Executive Board.

Section 3. The National President shall appoint such Representatives as he may deem necessary from time to time, subject to the approval of the National Executive Board.

Section 4. The National President shall have power to withdraw any field assignment made to any elected Officer when he becomes convinced that the Officer has been derelict in his duty or been guilty of a dishonest act. Such withdrawal of assignment shall not act to suspend the vote or pay of such an Officer, which power lies only in the National Executive Board or Trial Committee, as provided in this Constitution.

Section 5. The National President may suspend and remove from the payroll any appointed Representative from his assigned duties for the dereliction in the performance thereof, or for conduct unbecoming a Representative of the Association, or to conserve the finances of the Association, subject to the approval of the National Executive Board.

Section 6. The National President may hire such legal, technical, or professional help as is necessary to efficiently operate the departments of the Association subject to the approval of the National Executive Board.

Section 7. The National President shall by appointment fill all vacancies occurring in the National Office subject to the approval of the National Executive Board.

Section 8. The National President shall decide disputes or questions in controversy except such cases as follow the

procedure and conditions as outlined in this Constitution, such decisions being subject to appeal, first to the National Executive Board then to the Convention. Notice in writing may be filed with the National Secretary-Treasurer and the National President within thirty (30) days from the date of decision.

Section 9. The National President shall have authority to call special meetings of Chapters whenever he deems such meetings necessary to protect the interests of its membership after proper notification or consultation with Officers of Subordinate Bodies involved. He shall have the authority to delegate such duties to any National Officer or National Representative he may name, provided such delegation of authority is written, signed by him and bears the seal of the National Association.

Section 10. The National President shall convene regular and special sessions of the National Executive Board whenever necessary.

Section 11. The National President shall devote full time to the affairs of the Association.

Section 12. During his term of office, the National President shall establish his residence in the metropolitan area of the city where the headquarters of the Association are established.

Section 13. He shall be empowered to grant dispensations relating to membership fees and payment of per capita tax to the National Office subject to the approval of the National Executive Board, when in his judgment such dispensations will add to the growth of or conserve the interests of the Association.

Section 14. The National Executive Board Members shall be provided with agenda of business of each meeting by suitable means not later than twelve (12) hours of scheduled meeting by the President's office except in cases of emergency.

Section 15. The National President shall suspend or expel any Executive Board Member who is delinquent in

attendance for three consecutive meetings without good reason, subject to the approval of the National Executive Board.

(a) In the event of expulsion the National President shall, by appointment, fill the vacancy with a delegate of the last Convention with the approval of the National Executive Board.

Article XIV—Duties of the National Vice-President.

Section 1. The National Vice-Presidents shall, in the order of their designation, perform the duties assigned them by the National President. During the absence of the National President or his inability to act the Vice-Presidents shall in the order of their designation perform the duties of the office of the National President except that they cannot alter or modify any rules or regulations made by the National President without the approval of the National Executive Board. In the case of death or resignation of the National President, the Vice-Presidents shall in the order of their designation automatically assume the full duties and authority of the office of National President.

Section 2. The National Vice-Presidents shall devote full time to the affairs of the Association.

Article XV—Duties of the National Secretary-Treasurer.

Section 1. The National Secretary-Treasurer shall attend all sessions of the Convention and of the National Executive Board. He shall cause to be recorded the proceedings of the Convention and meetings of the National Executive Board. He shall have charge of and preserve all books, documents and effects of the National Office, except such records and documents that properly belong to the office of National President. He shall issue receipts for all moneys paid to the Association; pay all bills and current expenses as approved by the National Executive Board All expenditures shall be paid by checks countersigned by the National President when the latter is satisfied of their

correctness. The National Secretary-Treasurer shall keep copies of all important correspondence sent out and received by the National Office. He shall submit expenses of each Officer and employee together with a detailed statement of receipts and disbursements of all money belonging to the Association to the National Executive Board.

Section 2. The National Secretary-Treasurer shall be the custodian of the funds of the Association and at the direction of the National Executive Board shall deposit all funds of the Association in some responsible bank or banks. He shall invest all funds in excess of a specified amount to be decided by the National Executive Board with banks giving interest-bearing certificates of deposit, or invest such excess in bonds of the United States Government.

Section 3. The seal of the Foreman's Association of America shall remain in the form and design as heretofore used. The seal of the Foreman's Association of America shall be held by the National Secretary-Treasurer in trust, for the use of the membership in their organization affairs, and he shall prosecute any and all proceedings proper to prevent the wrongful use of or imitation of the seal or of the name, Foreman's Association of America. He shall also take such measures as may be necessary to register or copyright the seal and the Association name, the label, insignia, and any other property of the Association that may be necessary to copyright or register.

Section 4. The National Secretary-Treasurer shall give a bond, amount of which shall be determined by the National Executive Board, and paid for by the Association, to insure the faithful discharge of his duties.

Section 5. The National Secretary-Treasurer shall perform such other duties as are herein provided for in this Constitution or may be assigned to him by the National Executive Board.

Section 6. When a Chapter has failed to report and pay the per capita tax and assessments as provided for herein,

the National Secretary-Treasurer shall notify the Chapter President and Board of Trustees of that fact.

Section 7. The National Secretary-Treasurer shall forward to all chapters which have paid their per capita tax for the preceding quarter, the financial and membership report as submitted by the National Auditor within (30) days following the end of said quarter.

Section 8. The National Secretary-Treasurer shall, with the consent of the National Executive Board, employ such assistance as may be necessary to conduct the affairs of his office.

Section 9. The National Secretary-Treasurer shall conduct all correspondence and receive all applications for Charters and countersign such Charters as are granted by the National Executive Board and signed by the National President.

Section 10. The National Secretary-Treasurer shall, at the end of his term of office, deliver to his successor in office all books, money, property, papers, and other belongings of the Association in his keeping, and his books and affairs shall at all times be open for inspection by the general officers.

Section 11. The National Secretary-Treasurer shall devote full time to the affairs of the Association.

Article XVI—Duties of the National Executive Board.

Section 1. The National Executive Board shall execute the instructions of the Convention and shall be the highest authority of the Association between Conventions, subject to the provisions of this Constitution, and shall have the power to authorize strikes, issue Charters, and punish all Subordinate Bodies in one of the two following manners:

(a) In case of disputes or conditions within a Subordinate Body that might threaten its existence, the National Executive Board by majority vote may reorganize the Subordinate Body by ordering a special election to be held within thirty (30) days after the members in good stand-

ing are notified by mail. Under this provision, the elected officers of the Subordinate Body shall continue to hold office until the election and may run for re-election. The National Executive Board may have two (2) representatives to work with the Chapter Election Committee.

(b) For violation of this Constitution or in case of disputes within any Subordinate Body affecting the welfare of its membership or its existence, the National Executive Board may, by a two-thirds (⅔) vote of the entire Board, after a hearing, revoke the Charter or suspend any Officer or Officers from office and take over supervision of the Subordinate Body until its affairs have been properly adjusted. In any case of suspension of Officers, an election of new Officers shall take place within sixty (60) days from date of order, whereupon the Subordinate Body shall be returned its autonomy under this Constitution.

Section 3. The National Executive Board shall approve all Charters and initial supplies necessary to operate the Subordinate Bodies of the Association.

Section 4. The National Executive Board shall decide all questions involving the interpretation of this Constitution between Conventions.

Section 5. It shall pass upon all claims, grievances and appeals from the decisions of Subordinate Bodies of the Association, in the manner provided by this Constitution.

Section 6. The National Executive Board shall cause the books and acts of the National Secretary-Treasurer to be audited by a Certified Public Accountant quarterly, and this report shall be transmitted to Chapters who have paid their per capita tax for the previous quarter within thirty (30) days following the end of said quarter. Enclosed with said report shall be a report of the quarterly activities of the Association and a summary and an explanation of the actions of the National Executive Board.

Section 7. Upon written request of three (3) members of the National Executive Board to the National President for a special Board meeting and upon receipt of such re-

quest, the National President shall cause the Board to convene within seventy-two (72) hours after receipt of such a request. In case the National President fails to convene the Board within the time allotted, the National Secretary-Treasurer or a Board Member previously designated by the Board shall convene the requested special Board meeting.

Section 8. A majority of the members comprising the National Executive Board elected at the preceding Convention shall constitute a quorum of said Board.

Section 9. The National Executive Board shall set up such departments as provided for in this Constitution. It may create additional departments if voted upon by a two-thirds (⅔) majority for promoting the business of the Association or the welfare of its membership. It may hire professional specialists, not members of the Association, for such departments if not available within the membership.

Section 10. On the order of the National Executive Board, the National Secretary-Treasurer will investigate the finances of any Chapter of the Association and submit a report to the National Executive Board within thirty (30) days of receipt of such request.

Article XVII—Duties of the National Membership-Director.

Section 1. The National Membership Director shall have general supervision over the organizing activities of the Association and its Chapters to the end that such activities may be harmoniously, lawfully, and efficiently conducted, and he shall have supervision of any and all Subordinate Organizations until such time that they shall receive their provisional charter. He shall at all times work under the general direction and supervision of the National President and the National Executive Board.

Section 2. The National Membership Director shall be empowered to appoint an Organizing Committee to assist

him in his work, this Committee to be subject to the approval of the National Executive Board.

Section 3. The National Membership Director shall devote full time to the affairs of the Association.

Article XVIII—Duties of the National Trustees.

Section 1. The National Trustees shall serve for three years each. In the original election of Trustees one shall be elected for one year; one for two years; and one for three years, and at each subsequent election as the vacancies occur each Trustee shall be elected for a three-year term.

Section 2. The National Trustees shall examine the quarterly audit and report their findings in the form of a written report to the National Executive Board.

Section 3. The National Trustees shall examine at least once between quarterly audits all the books and records of the National Secretary-Treasurer pertaining to the conditions of the funds and accounts, and shall in the form of a written report submit their findings to the National Executive Board together with such other information as they may deem necessary.

Section 4. The National Trustees shall recommend in the form of written reports to the National Executive Board methods of auditing and recording all items of receipt and expenditure.

Section 5. The National Trustees shall affix their signatures to the leases, applications for Fiduciary Officers' and employees' bonds and applications for insurance policies for the Association, and they may use the services of the legal counsel of the Association when they deem it necessary to seek legal advice pertaining to such leases and Fiduciary Officers' and employees' bonds and insurance policies.

Section 6. The National Trustees shall have charge of and preserve all Fiduciary Officers' and employees' bonds, leases, insurance policies, records, and reports of audits.

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Section 7. The National Trustees shall recommend to the National Executive Board in the form of a written report the financial status and stability of insurance companies, bonding companies and banking houses with which the Association has business connections.

Section 8. A majority of the Trustees must be present at the examination of the accounts, books, and auditors' reports, and no Trustee shall affix his signature to any report unless he shall have personally participated in such examination.

Section 9. Should inaccuracies appear in the report of the Trustees the National President shall appoint a Certified Public Accountant to examine the books and records of the funds and accounts of the Association and he shall report the findings of the Certified Public Accountant to the National Executive Board, and in the event of willful falsification in their reports, shall suspend such Trustee or Trustees from office.

Article XIX—Salaries and Expenses.

Section 1. The salaries of the National President, the National Vice-Presidents, the National Secretary-Treasurer, and the National Membership Director for the full-time services rendered by each of said Officers during their term of office shall be as follows:

National President	$7,500 per annum
National Vice-Presidents	$6,000 each per annum
National Sec'y-Treasurer	$6,000 per annum
National Membership Director	$6,000 per annum

Section 2. The National President, Vice-Presidents, Secretary-Treasurer, and Membership Director shall not serve in any capacity as an Officer of any Chapter, Regional Organization, or other Subordinate Body beyond a period of thirty (30) days after having been elected a National Officer of the Association.

Section 3. A National Executive Board Member shall serve under the general direction of the National Presi-

dent subject to the decision of the National Executive Board.

Section 4. All National Officers and National Representatives when traveling or away from their duly designated home offices on Association business shall be allowed first-class transportation fare by the shortest route to and from their destination, plus personal hotel and incidental expenses up to $12.00 per day. In addition to the above, when these officers and National Representatives are required to incur organizational expenses for the good of the Association, such organizational expenses shall be presented in itemized form for payment, it being understood that payment of all such items is under the control of the National Executive Board.

Section 5. The compensation of any member of the Association, performing service under direction of the National Executive Board, shall be an amount for time lost equal to his earning capacity, except that this remuneration shall be not less than ten dollars ($10.00) per day, or in case of National Representatives, sixty dollars ($60.00) per week.

Section 6. The full-time salaried Officers and employees with a year's service in the Association shall be allowed a two-weeks vacation with pay, or pay in lieu thereof for each year, but such vacation shall not interrupt the ordinary workings of their office.

Article XX—Official Publication.

Section 1. There shall be published at least once a month by the Association, a publication designed to educate the membership and acquaint the membership with the activities of the Association. The title of said publication shall be "The Supervisor" or its successor designation, official publication of the Association.

Section 2. "The Supervisor" shall be under the supervision of the National Executive Board who shall select a Publication Committee consisting of the National President and two members of the National Executive Board.

The Publication Committee shall be directly responsible to the National Executive Board in carrying out the task of publishing "The Supervisor." The Editor of "The Supervisor" shall be appointed by the National President, subject to the approval of the National Executive Board. The Editor shall have the power to appoint Associate Editors, subject to the approval of the National Executive Board, to assist him in his work. The Editor shall be paid a fixed sum as set and approved by the National Executive Board.

Section 3. The National Secretary-Treasurer shall allocate out of each per capita tax paid to the Association five cents ($.05) for a subscription fee which shall be sixty cents ($.60) per annum, and this subscription fee shall be placed in a fund to be known as the "Supervisor" fund.

Section 4. All income from advertising in the official publication, "The Supervisor," shall be credited to the "Supervisor" fund.

Section 5. Mailing costs shall be charged to each Chapter for the number of copies they have sent out.

Section 6. This publication is to be sent through the United States mail to each member in good standing.

Section 7. To non-members the rate shall be one dollar ($1.00) per annum with postage additional for foreign subscriptions.

Section 8. Price of single copies shall be ten cents ($.10).

Section 9. All Chapter publications shall be in conformity with the policies of the Association and must first be authorized by the National Executive Board.

Article XXI—Education Department.

Section 1. Education shall be a recognized part of the business of this Association and of each Chapter, as heretofore provided in Article II of this Constitution.

Section 2. The National President shall appoint an Educational Director of the Educational Department, and such

appointment shall be subject to approval of the National Executive Board.

Section 3. The funds necessary for the operation of the Educational Department shall be appropriated from the "General" fund of the Association by the National Executive Board. Such appropriations shall be allocated to the "Educational" fund.

Section 4. Each Chapter shall set up a Chapter Educational Committee as part of its organization. The duties of this Committee shall be to promote educational, recreational, and cultural activities in the Chapter.

Section 5. The National Educational Director shall have the power to appoint Associate Directors to assist him in his work, subject to the approval of the National Executive Board. He shall be paid a fixed sum for his services, as set from time to time and as approved by the National Executive Board.

Article XXII—Charges and Trials of Officers and Members.

Section 1. Any elected or appointed Officer of the Association may be removed from office for any violation of this Constitution or of the By-Laws of the Chapter of which he is an Officer; or because of the commission of any act which may be deemed to impair the usefulness of the Association or which is unbecoming to the dignity of his office.

Section 2. All charges must be in writing and signed by the accuser and filed with the National Secretary-Treasurer who shall refer such charges to the appropriate Trial Body and shall give notice in writing by registered mail of such charges to the accuser and the defendant and of the time and place of the hearing, which hearing shall be held within one month after the receipt of such charges.

Section 3. No Officer or member shall be fined, suspended, or expelled without proper notice of charges and a fair opportunity to be heard in defense; but an Officer

or member under charges under Section 1 of this Article may be suspended by the National President pending trial.

Section 4. Charges made by a member of a Chapter against another member of the same Chapter shall be tried by the Chapter Executive Board.

Section 5. Charges made by a member of a Chapter against an Officer of the same Chapter shall be tried by the National Executive Board.

Section 6. Charges made by a member of one Chapter against a member of another Chapter shall be tried by the National Executive Board.

Section 7. Charges made by a member of a Chapter against an Officer of another Chapter shall be tried by the National Executive Board.

Section 8. Charges against National Officers or members of the National Executive Board by a National Officer, Chapter Officer, or member of the Association shall be tried by a Trial Committee consisting of twelve (12) members elected annually by the Delegates to the Convention.

Section 9. In the event any member of the Trial Committee is a member of a Chapter of which the accuser or the defendant is also a member the Committee member shall be disqualified from serving on the Trial Committee in the instant case.

Section 10. By not less than a two-thirds (⅔) vote of the members of the Trial Committee a National Officer or National Executive Board Member may be reprimanded, fined, suspended, or expelled, if found to be guilty of the charges filed against him.

Section 11. At no time shall the Trial Committee hear charges with less than nine (9) members assembled.

Section 12. If the defendant shall fail to appear at the time and place designated for the trial without presenting a sufficient cause for his absence the Trial Body shall proceed to take testimony and make decisions in the same manner as if the defendant were present.

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Section 13. Any member or Officer involved in a trial either as an accuser or defendant shall have the right either in person or through a representative (who shall be a member in good standing, but not an Officer or member of the Trial Committee) to question all witnesses and to present evidence bearing on the case.

Section 14. Any Officer or member involved in any case either as an accuser or a defendant shall be disqualified from sitting on the Trial Body in his own case.

Section 15. In cases tried by the Trial Committee the Committee or person authorized by it shall have the power to direct the production of books or papers by any subordinate body or any Officer thereof, and shall likewise have the power to direct any member to appear before them to give testimony in connection with any pending charge or investigation.

Section 16. If any member or Officer shall knowingly prefer false charges against any other member or Officer of the Association the accuser may be placed on trial for having brought such false charges and such trial shall be conducted in the same manner and before the same Trial Body as the trial or charges made by the accuser.

Article XXIII—Appeals.

Section 1. All Subordinate Bodies of the Association and members thereof shall be entitled to the right of appeal.

Section 2. If a Subordinate Body or member of the Association wishes to appeal from any action, decision, or penalty, the appeal shall be to the National Executive Board, and if it is desired to appeal the decision of the National Executive Board an appeal may be taken therefrom to the next Convention. The decision of the Convention shall be final. In all cases, however, the decision of the lower tribunal must be complied with before the right to appeal can be accepted by the next tribunal in authority, and shall remain in effect until reversed or modified.

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Section 3. Any member of the Association wishing to appeal from the action, decision or penalty of a Subordinate Body shall do so in writing within thirty (30) days after the aforesaid action, decision; or penalty, and he must notify said Subordinate Body of his intention in writing. It shall be the duty of the Subordinate Body to forward to the National Secretary-Treasurer a complete written statement of the matter in issue.

Section 4. Any Subordinate Body or member of the Association wishing to appeal from any action, decision, or penalty of the National Executive Board to the Convention, must serve notice of appeal with the National Secretary-Treasurer within thirty (30) days after such decision is rendered.

Section 5. In no case shall a Subordinate Body or member of the Association appeal to a civil court for redress until all rights of appeal under the laws of this Constitution have been exhausted. Any violation of this Section shall be cause for suspension, or expulsion, or for revocation of Charter, by a two-thirds (⅔) majority vote of the National Executive Board.

Section 6. Appeals from the decisions of the Trial Committee may be made only to the Convention as provided in Article XXII.

Section 7. The National President may extend the time for filing any appeal under Article XXII and Article XXIII, if in his opinion justice will be served thereby.

Article XXIV—Contracts and Negotiations.

Section 1. It shall be the established policy of the Association to recognize the spirit, the intent, and the terms of all contractual relations developed and existing between Chapters and Employers. Each Chapter shall be required to carry out the provisions of any Agreements negotiated.

Section 2. Negotiations between Chapters and the Employers shall be conducted by a Committee selected by the Chapter which shall participate in all conferences and

negotiations. A National Officer or Representative may participate and act as a member of the Chapter Committee during negotiations. Copies of any Agreements arrived at between Chapters and the Employers shall be filed with the National Secretary-Treasurer immediately following the affixing of signatures to the Agreement and prior to the ratification of the Agreement by the membership of the Association. All terms of any Agreement must comply with the laws of this Constitution and the By-Laws of the Chapter.

Section 3. The National Executive Board shall be empowered to accept or reject any signed Agreement prior to the ratification of the membership of the Association and shall notify the Chapter President of their acceptance or rejection, and if rejected the reasons therefor.

Section 4. No Chapter Officer, Chapter Representative, or member of the Association shall have authority to negotiate the terms of an Agreement with any Employer without first obtaining the approval of the Chapter Executive Board.

Section 5. No National Officer, National Executive Board Member, or National Representative shall have authority to negotiate the terms of an Agreement with any Employer without first obtaining the approval of the National Executive Board.

Section 6. In the event the National President prior to the approval of the National Executive Board recommends approval of any Agreement between a Chapter and an Employer the Agreement shall become operative until final action is taken by the National Executive Board.

Section 7. A general Chapter meeting of the members of the Association shall be the highest authority for handling problems within the Chapter.

Section 8. A general meeting of the members of the Association of all Chapters of the Association shall be the highest authority for handling problems within the Association between Conventions.

Section 9. National Membership Meetings shall be noticed by written communication to every member of the Association.

Section 10. All decisions of the members of the Association at Chapter meetings must be in conformity with the By-Laws of the Chapter and this Constitution.

Section 11. Any decisions of a general meeting of the members of the Association of all Chapters must be in conformity with the provisions of this Constitution unless altered, amended, or modified under the provisions of Article XXIX.

Section 12. The National Executive Board shall protect all Chapters who have succeeded in establishing higher wages and favorable working conditions, and who have superior Agreements so that no infringement may be committed by other Chapters who may have inferior Agreements.

Article XXV—Laws Governing Chapters and Regional Organizations.

Section 1. All Subordinate Bodies shall submit any and all laws governing said Subordinate Bodies to the National Secretary-Treasurer for approval by the National Executive Board.

Section 2. Each Subordinate Body shall strive to obtain the objectives set forth in this Constitution.

Section 3. Each Subordinate Body may maintain free relations with other organizations, but shall affiliate with no labor organization other than the Foreman's Association of America.

Section 4. Each Chapter shall have the following Officers: President, Vice-President or Vice-Presidents, Recording Secretary, Financial Secretary, Treasurer, three Trustees, Sergeant-at-Arms, and an Executive Board consisting of not less than five (5) members.

Section 5. All Chapter Officers shall be elected by secret ballot, and the election shall take place within thirty (30)

days following the Convention, and installation of Officers shall take place at the next regular Chapter meeting, following the election unless otherwise authorized by the National Executive Board.

Section 6. After the deadline for accepting nominations set by the Chapter Election Committee no election of so-called "sticker" or "write-in" candidate shall be considered legal.

Section 7. The term of office for all Chapter Officers shall be one year with the exception of the Trustees who shall serve for three (3) years each. In the original election of Trustees, one shall be elected for one year, one for two years, and one for three years, and at each subsequent election as the vacancies occur each Trustee shall be elected for a three-year term.

Section 8. No member of the Association shall be eligible for election as an Officer or Delegate to a Convention until he has been a member in continuous good standing in the Chapter for one year immediately prior to the nomination except in the case of Chapters organized for a period less than one year at the first election.

Section 9. At the discretion of the Chapter the Offices of the Financial Secretary, Recording Secretary and Treasurer may be combined.

Section 10. No member of the Association may hold two (2) paid full-time jobs or Offices in the Association at the same time.

Section 11. Chapter meetings shall be noticed to all members of a Chapter by any suitable method at the discretion of the Chapter Executive Board.

Article XXVI—Duties of Chapter Officers.

Section 1. It shall be the duty of the Chapter President to preside at all membership meetings of the Chapter, sign all orders on the Treasurer, and countersign all checks issued by the Treasurer against accounts of the Chapter when authorized by the Chapter Executive Board; to en-

force the provisions of this Constitution, and appoint Committees not otherwise provided for. He shall be a member ex-officio of all Committees.

Section 2. It shall be the duty of the Chapter Vice-President or Vice-Presidents to assist the President in the discharge of his duties and to perform the duties of the President in his absence, death, incapacity, or resignation from office.

Section 3. It shall be the duty of the Chapter Recording Secretary to keep a correct record of the proceedings of the Chapter, furnish the National Secretary-Treasurer with the names and addresses of all Chapter Officers, read all documents and correspondence to the Chapter membership and keep them on file for future reference.

Section 4. It shall be the duty of the Chapter Financial Secretary to receive all dues, membership fees, assessments, fines, and other income of the Chapter, and to give official receipts for same.

(a) He shall write all checks drawn on the Chapter funds and report in writing every month at a regular meeting of the Chapter membership, giving the amount of moneys received and paid out during the previous calendar month, divided as between the various income and expenditure classifications, and the remaining balances in the fund accounts of the Chapter.

(b) He shall report all collections either with the Treasurer, taking a receipt therefor, or in such bank as the Trustees may recommend or the Chapter Executive Board may direct, with advice to the Treasurer as to the amount so deposited.

(c) He shall by the 20th of each month send a report to the National Secretary-Treasurer on forms purchased from the National Office together with the correct amount of money due the National Office for the preceding month which begins on the first and ends on the last day of the month.

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(d) He shall receive applications for membership, and notify candidates of their election or rejection.

(e) He shall assist the National Office in seeing that all members receive the official publication regularly when eligible, provide each member with an official receipt for all moneys paid, and provide each member with a copy of the Constitution and Chapter By-Laws.

(f) He shall keep a record of all new members, members suspended, expelled, deceased, transferred and reinstated during his term of office, and notify the National Secretary-Treasurer of same, and perform such other duties as the Chapter By-Laws prescribe or the Chapter Executive Board may direct.

(g) He shall maintain a complete record of all members of the Chapter. This record shall have the date of application for membership, the name of member, the home address, the date of reinstatement, the date of death, and such other information as may be deemed necessary to keep a record of the continuous membership of a member of the Association.

(h) He shall keep an inventory of all records and property of the Chapter. The same shall contain when possible the date of purchase and the amount paid for each article purchased.

(i) He shall notify all members in arrears of the amount of their indebtedness, and turn over his books to the Trustees for approval when called upon to do so.

(j) He shall on the demand of the National Secretary-Treasurer produce his books for examination and audit.

(k) Should it be proven that any Chapter Financial Secretary has willfully and intentionally failed to report monthly the full membership of the Chapter to the National Secretary-Treasurer or to send in the full amount of per capita tax on the same number of members that have paid dues to the Association, the Chapter may suspend him from all privileges and benefits until the deficiency is made good and the Officer responsible for such

failure shall not be allowed to again hold office in the Association.

Section 5. It shall be the duty of the Chapter Treasurer to give a receipt for all moneys received. The moneys received must be deposited in such bank as the Chapter Trustees may recommend or the Chapter Executive Board may direct in such funds as the Chapter may set up in the name and number of the Chapter.

(a) He shall sign all checks which must be countersigned by the Chapter President.

(b) He shall report in writing every month at a regular meeting of the Chapter the total receipts and total expenditures for the Chapter for the previous calendar month, and the amount of money still on deposit.

(c) He shall deliver to his successor all moneys and other property of the Chapter.

(d) He shall on demand of the National Secretary-Treasurer or Trustees of the Chapter produce his books for examination and audit.

Section 6. It shall be the duty of the Chapter Trustees to examine the quarterly audit and report their findings in the form of a written report to the Chapter Executive Board, and to mail a duplicate copy of their report to the National Secretary-Treasurer.

(a) The Chapter Trustees shall examine at least once between quarterly audits all the books and records of the Chapter pertaining to the conditions of the funds and accounts, and in the form of a written report submit their findings to the Chapter Executive Board together with such other information as they may deem necessary, and to mail a duplicate of their report to the National Secretary-Treasurer.

(b) Chapter Trustees shall recommend in the form of written reports to the Chapter Executive Board methods of auditing and recording all items of receipt and expenditure.

(c) The Chapter Trustees shall affix their signatures to the leases, applications for Fiduciary Officers' and employees' bonds, and application for insurance policies for the Chapter. And they may use the services of the legal counsel for the Association when they deem it necessary to secure legal advice pertaining to such leases and Fiduciary Officers' and employees' bonds and insurance policies.

(d) Chapter Trustees shall have charge of and preserve all Fiduciary Officers' and employees' bonds, leases, insurance policies, records and reports of audits.

(e) Chapter Trustees shall recommend to the Chapter Executive Board in the form of a written report the financial status and stability of insurance companies, bonding companies, and banking houses, with which the Chapter has business connections.

(f) A majority of the Chapter Trustees must be present at the examination of the accounts, books, and auditors' reports, and no Chapter Trustee shall affix his signature to any report unless he shall have personally participated in such examination. Should inaccuracies appear in the report of the Trustees the Chapter President shall appoint a Certified Public Accountant to examine the books and records of the funds and accounts of the Chapter, and he shall report the findings of the Certified Public Accountant to the Chapter Executive Board, and in the event of willful falsification in their reports shall suspend such Chapter Trustee or Trustees from office.

(g) Chapter Trustees shall submit to the National Secretary-Treasurer a duplicate copy of all audits of the books, records, and accounts of the Chapter.

Section 7. It shall be the duty of the Chapter Sergeant-at-Arms to introduce all new members and visitors and assist the Chapter President in preserving order when called upon to do so. He shall take charge of all property of the Chapter not otherwise provided for, and perform such other duties as may be assigned to him from time to time.

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Article XXVII—Duties of the Chapter Executive Board.

Section 1. It shall be the duty of the Chapter Executive Board to direct the workings of the Chapter under the provisions of the Chapter By-Laws and this Constitution.

Section 2. The Chapter Executive Board shall be the highest authority of the Chapter between Chapter membership meetings, and shall meet at least once in each month.

Section 3. The Chapter Executive Board shall determine the amount of Fiduciary Officers' and employees' bonds, leases, insurance policies, and approve all Officers' and employees' expense accounts and disbursements of Chapter funds.

Section 4. The Chapter Executive Board shall have the authority to appropriate funds for the good and welfare of the Chapter.

Section 5. The Chapter Executive Board shall consist of at least five (5) members who shall be elected under the provisions of Section 4 of Article XXV of this Constitution.

Section 6. The Chapter Executive Board shall comply with any requests and instructions of the National Executive Board.

Section 7. Appointments by the Chapter President shall be subject to the approval of the Chapter Executive Board.

Article XXVIII—Strikes.

Section 1. The Chapter Executive Board when requesting that a thirty-day (30) intent-to-strike notice be filed under the War Labor Disputes Act must furnish a detailed report of the request to the National Executive Board.

Section 2. If the National Executive Board approves of a Chapter's Executive Board request, a chapter membership meeting must be held after having properly notified all members of said meeting, and a vote taken to determine the desires of the membership. The members of the Chapter must be in good standing to vote on the question.

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Section 3. If approved by the National Executive Board and the membership of a Chapter, the strike notice shall be filed by the National President.

Section 4. Copies of notice of any meetings that shall be held for the purpose of determining the wishes of the membership shall be forwarded to the National Secretary-Treasurer at the same time.

Section 5. Upon receipt of such notice, the National Secretary-Treasurer shall immediately notify the National President, who shall convene the National Executive Board for the purpose of making the necessary arrangements.

Section 6. Any strike action by the members of any Chapter of the Association shall be deemed to be unauthorized by the National Executive Board unless approved as herein provided.

Article XXIX—Oath of Office.

Section 1. Installing Officer. I (name of the Officer), hereby pledge on my honor to perform the duties of the office of (title of office), as required by the Constitution of the Association of America; to deliver all books, papers and other property of the Association that may be in my possession at the end of my term of office to my successor in office; and at all times to conduct myself as becomes a member of the Association.

Article XXX—Amendment.

Section 1. This Constitution may be altered, added to, or amended by a majority vote of the Delegates attending the Convention, provided such alteration, addition, or amendment has been in writing delivered to the National Secretary-Treasurer and by him distributed to the various Chapters not less than three (3) weeks prior to the date set for the Convention; or by a two-thirds (⅔) vote of the Delegates attending the Convention, whether the same has been previously written or distributed or not, and this Constitution may be altered, added to or amended by a majority vote of the members of three-fourths (¾) of the Chapters of the Association.

Petitioner's Exhibit No. 3

Article XXXI—Initiative.

Section 1. Any alteration, addition to, or amendment of this Constitution of the Association or any measure or policy may be initiated, adopted, and made effective by a majority written ballot of the members of the Association on a referendum thereon which shall be conducted, and the ballots shall be provided by the National Executive Board upon petition by ten (10%) percent of the members of the Association or upon petition by ten (10) of the Chapters of the Association.

PETITIONER'S EXHIBIT NO. 3.

Constitution of the Foreman's Association of America and Laws Governing Chapters.

Article I—Name.

This voluntary association of supervisory employees shall be known as Foreman's Association of America.

Article II—Purposes.

The purposes of the Association shall be to encourage social acquaintances among supervisory employees, to confer and act upon measures for the protection and advancement of the economic welfare of supervisory employees through collective bargaining, and to encourage study, conference and wider learning among supervisory employees to the end that they may improve in the supervision of men and women in industry.

Petitioner's Exhibit No. 3

Article III—Constitution.

This Constitution shall be the Supreme Law of the Foreman's Association of America.

Article IV—Headquarters.

The headquarters of the Association shall be located in the Metropolitan District of Detroit in the State of Michigan.

Article V—Membership.

Section 1. Membership in the Association may be obtained and held only through membership in a Chapter thereof.

Section 2. Any employee of good moral character, whose duties require the supervision of other employees, or who directs work, who may or may not supervise other employees, and who is not a member of any other organization recognized by his employer as representing him in collective bargaining, may become a member of the Association after having been employed as a supervisory employee for a period of not less than thirty (30) days prior to the filing of application for membership, and provided that such application to a Chapter of the Association is accompanied by a membership fee.

PETITIONER'S EXHIBIT NO. 4.

Constitution of the Foreman's Association of America
Adopted at Dearborn, Michigan, November 2nd, 1941.

Foremen's Association of America
Constitution.

Preamble.

From the early days of mass production by power machinery to the present decade the foreman was considered either as the channel through which the desires of ownership and management were conveyed to and made effective among the body of workers, or as the representative of ownership and management in the shop. Just before the opening of the present decade the organization of the body of workers into plant and industry-wide unions demanding the exclusive right of representation for collective bargaining purposes, dealing with employers or groups of employers in organizations that have existed for years, has greatly changed the real status of the foreman.

In the particulars of the day's production the foreman is yet the channel for making effective the policies and directions of management as applied to production, but he is a part of neither organized ownership and management on the one hand nor of organized labor on the other hand. The foreman fits between two enormous powers, ownership and management on top and labor unions with enormous numbers on the bottom. The foreman has reason to feel that in the ceaseless struggle between ownership and wage labor the foreman will become a victim unless all foremen are organized to protect individuals and interests common and essential to the position of foremen in modern mass power production.

Article I—Name.

This voluntary association of foremen shall be known as Foreman's Association of America.

Petitioner's Exhibit No. 4

Article II—Purposes.

The purposes of this association shall be to encourage acquaintance and social intercourse among foremen, to confer and act upon measures for the protection and advancement of the economic welfare of foremen, and to encourage study, conference and wider learning among foremen to the end that they may improve in the management of men in industry.

Article III—Constitution.

This constitution shall be the Supreme Law of this Association.

Article IV—Headquarters.

The headquarters of this Association shall be located in the Metropolitan District of Detroit in the State of Michigan.

Article V—Membership.

Section 1. Membership in this Association may be had only through membership in a chapter thereof.

Section 2. Any person of good moral character, who is at the time of filing his application and at the time of admission to membership a foreman for any owner or employer of labor, such person not being the owner or employer of labor, may become a member of this Association provided he has been a foreman for a period of not less than sixty (60) days prior to filing his application for membership, and provided his application to a chapter of this Association is accompanied by the initiation and membership fee.

. . . . . .

PETITIONER'S EXHIBIT NO. 5.

Chapters

Foreman's Association of America

No.	Name and Address	Date Chartered	Industry
1.	Ford Motor Dearborn, Michigan	1- 4-42	Automotive
2.	Briggs Mfg. Detroit, Michigan	2-16-42	Plumbing—Auto Bodies
3.	Chrysler Corporation Detroit, Michigan	9-22-42	Auto
4.	Detroit Lubricator Detroit, Michigan	8-27-42	Heating & Refrigeration Instruments
5.	Packard Motor Car Detroit, Michigan	10-13-42	Auto
6.	Hudson Motor Car Detroit, Michigan	11-17-42	Auto
7.	Gar-Wood Industries Detroit, Michigan	11-24-42	Hydraulic Trucks
8.	U. S. Rubber Detroit, Michigan	12-20-42	Rubber
9.	Detrola Corporation Detroit, Michigan	1- 3-43	Radio
10.	Timken-Detroit Axle Detroit, Michigan	1- 3-43	Truck Axles
11.	Kelsey-Hayes Wheel Detroit, Michigan	1-17-43	Auto Wheels
12.	G. M. Diesel Div. Detroit, Michigan	1-31-43	Nil—Now making Diesel Engines
13.	Detroit Edison Detroit, Michigan	2-16-43	Electricity Public Utilities
14.	Ford Motor Windsor, Ontario	2-16-43	Auto
15.	Great Lakes Steel Ecorse, Michigan	3-11-43	Steel
16.	Aluminum Company of America Detroit, Michigan	3-11-43	Aluminum
17.	G. M.—Det. Trans. Div. Detroit, Michigan	3- 4-43	Auto Parts
18.	Nash-Kelvinator Lansing, Mich.	3-11-43	Refrigerators Now—Aero. Propellers

Petitioner's Exhibit No. 5

No.	Name and Address	Date Chartered	Industry
19.	Chicago Pneumatic Tool Detroit, Michigan	3-11-43	Pneumatic Tools
20.	Graham-Paige Motors Corp'n Dearborn, Michigan	3-11-43	Auto
21.	Nash-Kelvinator Detroit, Michigan	3-21-43	Refrigerators
22.	Detroit Steel Products Detroit, Michigan	3-21-43	Steel Fabrication
23.	Bethlehem Fairfield Shipyards Baltimore, Maryland	5- 2-43	Ships
24.	Soss Mfg. Detroit, Michigan	5-21-43	Machine Parts
25.	Midland Steel Products Detroit, Michigan	5- 2-43	Steel Fabrication
26.	Studebaker Corp'n South Bend, Indiana	4- 4-43	Auto
27.	Woodall Industries Detroit, Michigan	4- 4-43	Auto Parts
28.	Pontiac Motors—Div. G. M. Pontiac, Michigan	5- 2-43	Auto
29.	Frost Gear & Forge Jackson, Michigan	5- 2-43	Auto Forgings
30.	Bohn Aluminum & Brass Detroit, Michigan	5- 2-43	Aluminum
31.	Ternstedt Mfg.—Div. G. M. Detroit, Michigan	5- 2-43	Die Castings
32.	Detroit Gray Iron Fdry. Detroit, Michigan	5- 2-43	Foundry
33.	Detroit Brass & Malleable Detroit, Michigan	5- 2-43	Foundry
34.	Murray Corp'n of America Ecorse, Michigan	5- 2-43	Auto Body Parts
35.	Firestone Rubber & Metal Prod. Wyandotte, Michigan	5-21-43	Rubber Products
36.	Whitehead-Kales River Rouge, Michigan	5-21-43	Structural Steel
37.	Wolverine Tube Detroit, Michigan	5-21-43	Steel Tubing
38.	Bendix Aviation South Bend, Indiana	5-21-43	Small Parts
39.	Youngstown Sheet & Tube East Chicago, Indiana	5-21-43	Steel
40.	Standard Oil Detroit, Michigan	6- 7-43	Petroleum Products

Petitioner's Exhibit No. 5

No.	Name and Address	Date Chartered	Industry
41.	Sinclair Refining East Chicago, Indiana	6- 7-43	Petroleum
42.	Carnegie-Illinois Steel Gary Sheet & Tin Gary, Indiana	6-11-43	Thin Sheet Steel
43.	Republic Steel—98" Strip Mill Cleveland, Ohio	7- 1-43	Strip Mill
44.	Carnegie-Illinois Steel Gary Works Gary, Indiana	7- 1-43	Steel
45.	Chevrolet Forge Detroit, Michigan	7- 1-43	Auto Forgings
46.	Federal Mogul Corp'n Detroit, Michigan	7- 9-43	Auto Parts
47.	Carnegie-Illinois Steel Farrell, Pennsylvania	8-24-43	Steel
48.	G. M.-Chev. Motor & Axle Buffalo, New York	8-24-43	Auto Parts
49.	Inland Steel Indiana Harbor, Indiana	8-24-43	Steel
50.	Bethlehem Steel Lackawanna, New York	8-24-43	Steel
51.	U. S. Rubber Des Moines, Iowa	8-24-43	Rubber
52.	United Stove Ypsilanti, Michigan	8-24-43	Stoves
53.	Olds Motor Works Lansing, Michigan	9- 2-43	Auto
54.	Simmons Company Elizabeth, New Jersey	10- 4-43	Bedding
55.	Herron-Zimmers Moulding Detroit, Michigan	10- 4-43	Steel Parts
56.	Gary Screw & Bolt—Div. Pittsburgh Screw & Bolt Gary, Indiana	10- 4-43	Steel Fittings
57.	American Steel Foundries East Chicago, Indiana	10- 4-43	Steelmaking
58.	Allegheny Ludlum Steel Dunkirk, New York	10- 4-43	Special Tool Steels
59	American Blower Detroit, Michigan	11- 2-43	Mining & Ventilator Blowers
60.	Fisher Body Div. Detroit, Michigan	11- 2-43	Auto Bodies
61.	Fruehauf Trailer Detroit, Michigan	11-23-43	Truck Trailers

Petitioner's Exhibit No. 5

No.	Name and Address	Date Chartered	Industry
62.	Gemmer Mfg. Detroit, Michigan	11-23-43	Auto Parts
63.	Willys-Overland Motors Toledo, Ohio	11-23-43	Auto
64.	Wyandotte Chemicals Wyandotte, Michigan	11-23-43	Chemicals
65.	G. M. Truck & Coach Div. Pontiac, Michigan	11-30-43	Truck & Coaches
66.	Bohn Aluminum & Brass Adrian, Michigan	12-13-43	*Now—Extrusion of Aluminum
67.	Buhl Mfg. Detroit, Michigan	1-11-44	Milk Cans
68.	Nash-Kelvinator Grand Rapids, Mich.	1-11-44	Refrigerator Parts
69.	L. A. Young Spring & Wire Detroit, Michigan	1-11-44	Spring & Wire
70.	Air Way Electric Appliance Toledo, Ohio	2- 8-44	Electric Appliances
71.	Westinghouse Electric & Mfg. Centerline, Michigan	2- 8-44	*Now—Naval
72.	Gear Grinding & Machine Detroit, Michigan	3-10-44	Grinding Parts
73.	Thermoid Trenton, New Jersey	3-10-44	Rubber
74.	Curtiss-Wright Columbus, Ohio	6- 9-44	*Now—Aviation
75.	Spicer Mfg. Pottstown, Pennsylvania	4-14-44	General Parts
76.	International Smelting & Ref. Tooele, Utah	4-14-44	Smelting
77.	Edw. G. Budd Companies Detroit, Michigan	4-14-44	Auto Wheels
78.	Chase Bag Toledo, Ohio	4-14-44	Paper Products
79.	Consolidated Paper Monroe, Michigan	4-14-44	Paper Products
80.	Dodge-Chicago Div. Chrysler Chicago, Illinois	4-14-44	*Now—Aviation Engines
81.	Indiana & Michigan Electric South Bend, Indiana	4-14-44	Electric Parts
82.	Fisher Body—Plant No. 1 Flint, Michigan	4-17-44	Auto Bodies
83.	Chev. Gray Iron Foundry Saginaw, Michigan	4-26-44	Foundry

Petitioner's Exhibit No. 5

No.	Name and Address	Date Chartered	Industry
84.	Aeronautical Products Detroit, Michigan	5- 3-44	*Now—Aero. Products
85.	Pullman Standard Car Mfg. Hammond, Indiana	5- 4-44	Railway Cars
86.	Zenith Carburetor Div. Bendix Detroit, Michigan	5-12-44	Carburetors
87.	Avvey Corp. Detroit, Michigan	5-17-44	General Parts
88.	Briggs Indiana Corp'n Evansville, Indiana	5-17-44	Auto Parts
89.	Michigan Steel Tube Detroit, Michigan	5-20-44	Steel Tubing
90.	Wright Aeronautical Corp. Cincinnati, Ohio	5-20-44	*Now—Aviation
91.	Packard Toledo, Ohio	5-22-44	*Now—Aero. Engine Parts
92.	Pullman Standard Car Mfg. Chicago, Illinois	5-22-44	Railway Cars
93.	Revere Copper & Brass Detroit, Michigan	5-24-44	Brass Products
94.	Acme Steel Riverdale, Illinois	5-31-44	Steel Products
95.	Defoe Shipbuilding Bay City, Michigan	6- 1-44	Ships
96.	Allied Steel Castings Harvey, Illinois	6-10-44	Steel Parts
97.	General Aniline Works Grasselli, New Jersey	6-26-44	Photographic Material
98.	B. F. Goodrich Co. Akron, Ohio	6-27-44	Rubber
99.	Bell Aircraft-Niagara Frontier Div. Buffalo, New York	6-26-44	*Now—Aircraft
100.	Tennessee Coal, Iron & R. R. Fairfield, Alabama	6-30-44	Mining Fdry. & Machinery
101.	American Steel Foundries Granite City, Illinois	8- 9-44	Steel
102.	White Motor Co. Cleveland, Ohio	6-30-44	Auto
103.	U. S. Rubber Passaic, New Jersey	7-10-44	Rubber
104.	E. A. Laboratories, Inc. Brooklyn, New York	7-10-44	General Parts
105.	Midland Steel Cleveland, Ohio	8-29-44	Steel

Petitioner's Exhibit No. 5

No.	Name and Address	Date Chartered	Industry
106.	Sparks-Withington Jackson, Michigan	7-17-44	Radio
107.	Wisconsin Steel Works Chicago, Illinois	11- 8-44	Steel
108.	General Spring Bumper-Div. HHC Chicago, Illinois	7-19-44	Steel Parts
109.	Harbison-Walker Refractories East Chicago, Indiana	7-19-44	Petroleum Products
110.	South Bend Toy Mfg. South Bend, Indiana	8- 2-44	Small Parts
111.	Republic Steel Buffalo, New York	8-11-44	Steel
112.	Fairfield Aircraft Hagerstown, Maryland	8- 9-44	Aviation
113.	Phelps-Dodge Copper Products Elizabeth, New Jersey	8-16-44	Copper & Brass Products
114.	Carnegie Ill. Steel—South Wks. Chicago, Illinois	8-16-44	Steel
115.	Wilson & Co. Inc. Packers Chicago, Illinois	8-16-44	Meat Products
116.	Ladish Drop Forge Cudahy, Wisconsin	8-16-44	Forgings
117.	Autolite Battery—Owen Dyneto Div. Syracuse, New York	8-17-44	Electric Products
118.	North Carolina Pulp Co. Plymouth, North Carolina	8-17-44	Paper Products
119.	The Rubberoid Joliet, Illinois	8-24-44	Rubber Products
120.	Electric Auto Lite Toledo, Ohio	9- 6-44	Electric Products
121.	Metal & Alloy Specialties Buffalo, New York	8-23-44	General Parts
122.	South Bend Lathe Works South Bend, Indiana	11- 8-44	Machinery
123.	Bethlehem Steel Johnstown, Pennsylvania	8-24-44	Steel Products
124.	American Steel Castings Newark, New Jersey	8-31-44	Foundry
125.	Campbell, Wyant & Cannon Fdry. Muskegon, Michigan	9- 6-44	Foundry
126.	Ludlow Typograph Chicago, Illinois	9- 8-44	
127.	F. L. Jacobs Detroit, Michigan	9-11-44	General Parts

Petitioner's Exhibit No. 5

No.	Name and Address	Date Chartered	Industry
128.	Murray Corp. of America Belding, Michigan	9-16-44	Refrigerator Parts
129.	American Locomotive Dunkirk, N. Y.	9-19-44	Locomotive & Engine Parts
130.	Northern Engineering Works Detroit, Michigan	9-27-44	General
131.	Johnson & Johnson Chicago, Illinois	10- 4-44	Medical Supplies
132.	Swift & Co.—GHH Plant Chicago, Illinois	10- 4-44	Meat Products
133.	U. S. Rubber Indianapolis, Ind.	10-10-44	Rubber
134.	Otis Elevator Aero Harrison, New Jersey	10-14-44	Elevators
135.	Fibreboard Products Inc. Vernon, California	10-16-44	Fibre Products
136.	Lakey Foundry Muskegon, Michigan	10-18-44	Foundry
137.	National Tube McKeesport, Pennsylvania	10-19-44	Steel
138.	Dow Chemical Bay City, Michigan	10-21-44	Chemical Products
139.	Bell Aircraft—B-29 Bomber Div. Marietta, Georgia	10-28-44	*Now—Aviation
140.	American Steel & Wire Co. Duluth, Minnesota	10-30-44	Steel Wire
141.	Westinghouse Lamp Div. Bloomfield, New Jersey	10-31-44	Electric Products
142.	Lincoln Brass Works Detroit, Michigan	11- 1-44	General Parts
143.	National Malleable Steel Castings Sharon, Pennsylvania	11-13-44	Foundry
144.	Pressed Steel Car Mfg. Chicago, Illinois	11-14-44	Railway Cars
145.	A. C. Spark Plug—G. M. Div. Flint, Michigan	11-16-44	Auto Production
146.	Mack Mfg. Corp. New Brunswick, New Jersey	11-30-44	General

* Chapters marked with an asterisk not in existence before the War.

PETITIONER'S EXHIBIT NO. 6.

Growth of Chapters by Quarters.

Quarters	Gain	Cumulated
1-1-42 to 3-31-42	1	1
4-1-42 to 6-30-42	0	1
7-1-42 to 9-30-42	2	3
10-1-42 to 12-31-42	4	7
1-1-43 to 3-31-43	15	22
4-1-43 to 6-30-43	20	42
7-1-43 to 9-30-43	12	54
10-1-43 to 12-31-43	13	67
1-1-44 to 3-31-44	8	75
4-1-44 to 6-30-44	27	102
7-1-44 to 9-30-44	29	131
10-1-44 to 12- 1-44 (This quarter not complete)	17	148
Total Chapters as of December 5, 1944...		148

PETITIONER'S EXHIBIT NO. 7.

Quarterly Membership Growth.

Quarter	Quarterly Gain	Cumulated
1941 (full year)	4,020	4,020
1942 (full year)	6,372	10,392
1-1-43 to 3-31-43	3,112	12,504
4-1-43 to 6-30-43	2,674	16,178
7-1-43 to 9-30-43	2,823	19,001
10-1-43 to 12-31-43	2,162	21,163
1-1-44 to 3-31-44	2,197	23,360
4-1-44 to 6-30-44	2,553	25,913
7-1-44 to 9-30-44	3,578	29,491
10-1-44 to 12- 1-44	2,633	32,124
Total as of December 5, 1944.....		32,124

PETITIONER'S EXHIBIT NO. 8.

Agreement Between Foreman's Association of America (United Stove Chapter No. 52) and the United Stove Company.

September 5, 1944.

Foreman's Association of America
National Office
515 Barlum Tower
Detroit 26, Michigan
CAdillac 2828

Robert H. Keys
President

William Vallance
1st Vice-President

W. Allen Nelson
2nd Vice President

Elmer Reno
Secretary-Treasurer

Harold M. Kelly
Membership Director

Agreement

This Agreement, made and entered into this fifth day of September, 1944, by and between the United Stove Company for the plant at Ypsilanti, Michigan, hereinafter called the Company, as employer, and Chapter No. 52 of the Foreman's Association of America, hereinafter known as the Association, as representative of the foremen employees of said employer, hereinafter referred to as Foremen.

Article I

Recognition

Section 1. The Company agrees to recognize the Association as the sole and exclusive collective bargaining agent for the Foremen and Assistant Foremen only, who are members of the Association, for the purpose of negotiating with the Company with respect to any problems or

disputes that may arise concerning wages or salaries, hours, working conditions, or other conditions of employment.

Section 2. The Association agrees not to affiliate with any other Union.

Section 3. The Management of the Company and the General Superintendent shall have the sole and exclusive right to hire, discharge, appoint, or promote any foreman.

Section 4. The right to hire and to maintain order and efficiency belongs solely to the Company and the Association agrees that inasmuch as its members are employed as supervisors by Management, they may be called upon to, and will, enforce the orders of the Company.

Section 5. In matters of promoting or demoting (except in disciplinary cases), the Company shall have the sole right to determine when to promote or demote, and shall not be limited to any of its buildings or areas, provided, however, that any promotion, demotion, transfers, discharges, etc., deemed to be unfair and in violation to the provisions of this Agreement may be reviewed and determined through the grievance procedure as hereinafter provided.

Section 6. The right to discipline for cause belongs solely to the Company, provided, however, that disciplinary action, taken against a foreman, shall not be unreasonable and if deemed to be unreasonable, it may be reviewed and determined through the grievance procedure as hereinafter provided.

Section 7. The Association recognizes other rights and responsibilities belonging solely to the Company, prominent among which, but by no means wholly inclusive, are the rights to decide the amount of supervision necessary, machine and tool equipment, products to be manufactured, and methods of manufacture, schedules of production, process of manufacturing or assembling, together with all designing, engineering, and the control of raw materials, semi-manufactured and finished parts, which may be incorporated in the products manufactured.

Section 8. It is understood and agreed that any of the rights, powers or authority the Company had prior to the

signing of this Agreement, are retained by the Company, excepting those specifically abridged, delegated, granted or modified by this Agreement and any supplementary agreements that may hereinafter be made.

Article II

Representation

Section 1. It is agreed the Association will name a Committee of one (1) Foreman and one (1) Assistant Foreman from among the Foremen, who shall be the Association Committee with authority to render decision, binding on the members of the Association, on all matters within its jurisdiction as set forth in this Agreement.

Article III

Grievance Procedure

Section 1. Any difficulties arising between the Company and the Association or any of its members, shall be settled in the following manner:

(1) between (a) any member of the Association and
(b) the General Superintendent.

(2) between (a) the Association spokesman and
(b) the General Superintendent.

(3) between (a) the Association Committee and the Plant Management.

Article IV

Working Hours

Section 1. As far as possible, the standard work day for foremen shall not be more than nine (9) hours and the standard work week shall not be more than fifty-four (54) hours.

Section 2. It is agreed that foremen shall be available at all times in cases of emergency, without additional or overtime compensation.

Article V

Wages and Salaries

Section 1. Foremen shall be paid wages and salaries comparable to those paid by other industrial concerns

manufacturing similar products for similar classifications of work, provided the National War Labor Board, or the Treasury, as the case might be, approves the same.

Section 2. Wages and salaries arrived at under this Agreement shall be those in effect at the time of the signing of this Agreement and as approved by the National War Labor Board, Case Number 11-7432, dated December 29, 1943, and shall be in effect for one year and shall be subject then, to adjustment, by negotiation between the Association Bargaining Committee and the General Superintendent or the Plant Management, provided the National War Labor Board, or the Treasury, as the case might be, approves the same.

Article VI

Vacations and Sick Leave

Section 1. All foremen who have served as foremen for one year, shall be given one (1) week's vacation with pay equal to 1/52 of the annual earnings, and all foremen who have served as foremen for two (2) years or more, shall be given two (2) weeks' vacation with pay of 1/26 of the annual earnings, beginning in 1944.

Section 2. A foreman who may become ill and whose claim of illness is supported by satisfactory evidence shall be granted sick leave of absence automatically and shall be entitled, if necessary for this reason, to a total of fourteen (14) days of such sick leave in each calendar year beginning on January 1, 1944, without deduction from pay.

Section 3. A foreman requesting leave of absence shall make application to the plant Superintendent in writing. An approved copy of such application shall be furnished to the foremen before such leave becomes effective. Leave of absence may be granted upon application of a foreman, and the approval of the Company, when the services of the foreman are not immediately required and there are foremen available capable of doing this work, provided that the foreman does not work on any other position during his leave of absence unless mutually agreed to by the Company and the Association.

Petitioner's Exhibit No. 8

Article VII

Seniority

Section 1. Seniority shall be by departments and the general foreman or head of any department shall have seniority over his assistant foreman regardless of length of service.

Section 2. In the event that the foreman is laid off, he shall accumulate seniority during the lay-off period, if it does not exceed twelve (12) months.

Section 3. Any foreman shall lose his seniority if he quits or is discharged for good cause or if he fails to report for work within seventy-two (72) hours after being notified in person or by registered mail, or if he fails to notify the Company, giving a satisfactory reason why he cannot report for work after being contacted. In cases of emergency when the senior foreman is not immediately available, the Company may use the seniority list to secure a qualified man until the senior foreman reports, if he does so within the period above specified.

This Agreement shall go into effect September 5, 1944, and shall be fully binding on both parties hereto and shall continue from year to year thereafter unless notice of desire to modify or terminate, is given in writing by either party at least thirty (30) days prior to September 5th of any year thereafter.

FOREMAN'S ASSOCIATION OF AMERICA,
CHAPTER NO. 52

By: ROBERT H. KEYS
National President

By: CARL BROWN
National Executive Board Member

By: GEORGE RUTLEDGE
Chapter President

UNITED STOVE COMPANY

By: H. H. MILLER
President

By: C. C. CURTISS
Secretary-Treasurer

PETITIONER'S EXHIBIT NO. 9.

Petitions for Bargaining.

Chapter	No.	Case No.	Filed	Withdrawn
Chrysler	3	7-R-1277	Jan. 15, 1943	June 29, 1943
Chrysler	3	7-R-1278	Jan. 15, 1943	June 29, 1943
Chrysler	3	7-R-1280	Jan. 15, 1943	June 29, 1943
Chrysler	3	7-R-1324	Mar. 22, 1943	June 29, 1943
Chrysler	3	7-R-1325	Mar. 22, 1943	June 29, 1943
Chrysler	3	7-R-1354	Mar. 6, 1943	June 29, 1943
Chrysler	3	7-R-1361	Mar. 10, 1943	June 29, 1943
Chrysler	3	7-R-1426	Apr. 20, 1943	June 29, 1943
Chrysler	3	7-R-1427	Apr. 20, 1943	June 29, 1943

Chapter	No.	Case No.	Filed	Dismissed
G. M. Diesel	12	R-5289	Mar. 6, 1943	July 20, 1943

Letter written for appeal—Dec. 10, 1943

Letter written on correction and amendment—Dec. 14, 1943

Order denying motion—August 16, 1944

Petitions for Bargaining.

Chapter	No.	Case No.	Filed	Withdrawn
Murray	34	VII-R-1240 R-4731	Jan. 4, 1943	

Election directed February 24, 1943.

Above is case of Murray-Ecorse Supervisors Association.

Hudson	6		Feb. 1, 1943	
Hudson	6	VII-R-1360	Amended Mar. 10, 1943	Mar. 11, 1943

Also letter from L. H. Bowen, Director N. L. R. B. Region #7, refusing to issue notice of hearing, dated June 29, 1943.

Petitioner's Exhibit No. 9

Petitions for Bargaining.

Chapter	No.	Case No.	Filed
Detroit Edison Co.	13	7-R-1374	March 16, 1943

Refusal by Detroit Regional Board to issue notice of hearing June 29, 1943.

Petitions for Bargaining.

Chapter	No.	Case No.	Filed
Midland Steel	25	7-R-1430	April 22, 1943

Refusal by Detroit Regional Board to issue notice of hearing June 29, 1943.

Detroit Steel Products	22	7-R-1433	April 27, 1943

Refusal by Detroit Regional Board to issue notice of hearing June 29, 1943.

Graham Paige	20	7-R-1441	May 4, 1943

Refusal by Detroit Regional Board to issue notice of hearing June 29, 1943.

Chicago Pneumatic Tool	19	7-R-1462	May 21, 1943

Refusal by Detroit Regional Board to issue notice of hearing June 29, 1943.

Aluminum Co. of America	16	7-R-1442	May 4, 1943

Refusal by Detroit Regional Board to issue notice of hearing June 29, 1943.

Timken-Detroit Axle	10	7-R-1307	Feb. 3, 1943

Refusal by Detroit Regional Board to issue notice of hearing June 29, 1943.

Petitioner's Exhibit No. 12

Independent Case Prior to Affiliation.

Chapter	No.	Case No.	
Studebaker	26	R-4575 R-4576 13-R-1672	Letter on this case of June 23, 1943. Case No. 13-R-1672 as Studebaker Salaried Employees Independent Union of Asst. Fmn.
Case as independent group of foremen prior to affiliation with Foreman's Association of America.			Cases R-4575, R-4576 Jan. 1943—dismissed. Heard as International Union, United Automobile, Aircraft & Agricultural Implement Workers of America C. I. O. and Studebaker Salaried Employees Independent Union.

PETITIONER'S EXHIBIT NO. 12.

Wage and Classification Agreement Between Ford Motor Company and Foreman's Association of America Ford Chapter No. 1

November 5, 1942

(1) Ford Motor Company, a Delaware Corporation, of Dearborn, Michigan, its successors or assigns, hereinafter known as the Company, as employer, and Ford Chapter No. 1 of Foreman's Association of America, a voluntary association, of 5746 Schaefer Road, Dearborn, Michigan,

hereinafter known as the Association, as representative of those foreman employees of said employer who have authorized the Association to represent them, hereinafter referred to as Foremen, agree as follows:

(2) That this Agreement shall govern the relations between said Company and the Association on all items included herein.

(3) The Company and the Association will from time to time meet at the request of either party to negotiate with respect to wage or salary rates on classifications of Foremen's work not covered by this Agreement. Any agreements arrived at may be added hereto as numbered and dated supplements, none of which may extend beyond the term of this Agreement as hereinafter limited.

(4) That not less than thirty (30) days before the termination of this Agreement, upon the written request of either party hereto, said parties will meet and in good faith negotiate a renewal thereof or amendments or additions thereto or a termination of this Agreement.

(5) That this agreement and all items included herein shall be effective on and after the date of this agreement, provided, however, that it is understood and agreed that no increases shall be paid to any of the employees involved as a result of this Agreement until the wage and salary rates and classifications set up in this Agreement have been approved by the National War Labor Board and that such rates and classifications are subject to such approval. Both parties hereby agree to submit such rates and classifications to the National War Labor Board for its consideration and approval with a request that they be approved as of November 5, 1942. In all events the orders of the National War Labor Board in this respect shall be followed by both parties, and, if the Board declines to grant said joint request, this agreement shall thereupon become null and void.

(6) That a schedule of salaries and hourly rates of pay for foremen is hereby agreed upon as follows:

Petitioner's Exhibit No. 12

A. Employees commonly known as foremen whose duties require them to supervise other employees shall be designated under classifications hereinafter numbered 1 to 6, both inclusive, provided that where this schedule is not properly applicable the joint committee may make other classifications, said schedule being as follows:

B.

No.	Classification	Men Supervised	Minimum Hourly Differential
1	Job Foreman, approx.	30	15¢ to 25¢
2	Division Shift Foreman....	60	30¢
3	Division Foreman	90	40¢
4	General Shift Foreman	120	50¢
5	Assistant General Foreman.	150	55¢
6	General Foreman	150	60¢

(1B) The first column serially numbers the agreed classifications and designations.

(2B) The second column states briefly the agreed name and function of each of the six agreed classifications.

(3B) The third column states the approximate number of men each foreman should supervise to qualify for the classification to which he is assigned.

(4B) The fourth column states the minimum rate for foremen above the highest negotiated rate for any operation under each class of supervision, excluding special rated employees.

(5B) With respect to paragraph 6—3B, it is agreed that the nature of the work and the degree of responsibility carried by each foreman shall be taken into consideration in classifying him, and that in the event of a disagreement on a foreman's classification an appeal may be made to the joint committee.

(6B) With respect to paragraph 6—4B it is agreed that where there are less than 25 per cent or more of special

rated employees (such as job setters, leaders, free lance, follow up, relief man, etc.) under the supervision of the foremen in question the rate will be based on the highest paid operation under his supervision, but that if there are under his supervision 25 per cent or more of special rated employees the rate shall be based on the highest negotiated rate of such special rated employees, if the rate of such special rated employees is higher than the highest negotiated rate for any operation under the supervision of the foreman whose rate of pay is considered.

(7B) It is agreed that as an illustration of the application of the foregoing schedule and rules, if an employee is promoted to a job foremanship of work where the highest paid operation is of a drill press on the spread rate of $1 to $1.10 per hour, he would within thirty days of that promotion receive 15¢ per hour above the highest negotiated rate paid to an operation under his supervision, or to $1.25 per hour, and within the following thirty days he will be paid an additional 5¢ per hour, and an additional 5¢ per hour will be paid him within six months from the date of his promotion upon recommendation of his department head and superintendent, subject, however, to an appeal from a denial thereof to the joint committee.

C. It is agreed that there shall be excepted from the operation and application of the schedule hereinabove set forth (paragraph 6B) all foremen supervising employees who are classified as follows: Chip Pullers and Chip Handlers, Cleanup Departments, Bale Handlers, Textile Sorters, Paper Cleaners, Lumber Handlers, Concrete Busters, Track Men, Garbage Disposal, Car Washers, Greasers, Pumpmen, Attendants, Dust Collectors, Baggers, Loaders, Truckers, Ladle Dumper, Conveyor Slag and Stone, Clinker Conveyor, and all Laborers, and that as to such foremen there shall be applied a schedule or rate of pay as follows:

Petitioner's Exhibit No. 12

D.

No.	Classification	Men Supervised	Minimum Hourly Differential
1	Job Foreman, approx.	30	15¢
2	Shift Division Foremen....	60	20¢
3	Division Foreman	90	25¢
4	General Shift Foreman.....	120	30¢
5	Assistant General Foreman..	150	35¢
6	General Foreman	150	40¢

(7) It is agreed that all foremen whose rate of pay is fixed by the schedule hereinabove set forth in paragraph (6) D shall be given an opportunity to transfer to higher paying jobs of any kind for which they can qualify, provided there is an opening.

(8) Excepting the Job Foreman affected by and classified hereinabove, all Job Foremen who have been in the employ of Ford Motor Company as foremen for the period of one year or more prior to the date of this agreement shall immediately receive the 25 cents per hour differential provided for in schedule (6) B hereinabove set forth if they are receiving less than that amount on the date of this agreement.

(9) The pay rates of General Foremen shall be increased upon recommendation of their superintendents.

(10) No foreman shall receive a reduction in pay by reason of the execution of this agreement provided only that he continues to perform similar duties after the execution thereof.

(11) Foremen skilled in specific lines of work who are placed on lower paid jobs for the purpose of instruction or developing the job shall retain their original rates or be allowed to return to their original position.

(12) The proposed rates listed for foremen in Schedules

B and D hereinabove set forth are to be minimum rates paid by said Employer, but it is agreed that on recommendation of a department head on the basis of ability or responsibility carried, higher rates may be paid without changing the classification of foremen.

(18) That this agreement shall remain in full force and effect for one year immediately and continuously following November 5, 1942 and shall remain in force from year to year unless modified, terminated or amended.

In Witness Whereof, the Employer and Employee parties hereinabove named hereunto set their signatures at Dearborn, Michigan, on November ..., 1942, by their representatives respectively thereunto duly authorized.

FORD MOTOR COMPANY,

(Signed)

HARRY M. REYNOLDS,
W. J. COMMENT,
J. J. SIMINICK,
FRANK H. DRAGSDORF,
J. W. WAGGONER,
J. W. DURLING.

FORD CHAPTER NO. 1,
FOREMAN'S ASSOCIATION OF
AMERICA,

(Signed)

ROBERT H. KEYS,
President,

W. ALLEN NELSON,
Vice-President,

CARL E. BROWN,
BURRELL PARK,
W. G. ELLIOTT,
W. A. PELTIER,
E. W. DAWSON,
EARL McDERMITT.

Petitioner's Exhibit No. 13

PETITIONER'S EXHIBIT NO. 13.

(Copy)

December 22, 1943

It is hereby agreed between the Ford Motor Company, hereinafter designated as the "Company", and Ford Chapter of the Foreman's Association of America, hereinafter designated as the "Association" as follows:

Both parties hereby agree to appoint representatives who shall meet for the purpose of negotiating a collective bargaining agreement between the Company and the Association upon terms and conditions to be agreed upon by said negotiating committees.

Upon an agreement being reached between said negotiating committees as to the terms and conditions of the proposed contract, the Company will recognize said Association as collective bargaining agent for all of its foremen who are members of said Association and:

The Association agrees that the charges filed by Ford Chapter of the Foreman's Association of America against the Ford Motor Company, now pending before the National War Labor Board, File No. 111-2225-D, will be withdrawn upon the completion of negotiations and the signing of the contract, with the exception of Item No. 3, namely the discharge of Messrs William Elliott, Bertram Fenrich and George Kellogg. This item will remain in dispute and the National War Labor Board will be requested to render a decision thereon.

It is further agreed that both parties will immediately address a letter to the National War Labor Board requesting that pending said negotiations, as above stated, the War Labor Board shall hold in abeyance further consideration of said complaints, excepting Item No. 3.

FOREMAN'S ASSOCIATION OF AMERICA
By /s/ ROBERT H. KEYS
By /s/ CARL BROWN
By /s/ W. ALLEN NELSON

FORD MOTOR COMPANY
By IRVING L. PIERCE /s/
By HARRY A. MACK /s/
By I. A. CAPIZZI /s/

Packard Motor Car Co.
Aircraft Division

TOOL REPORT No. 857164

Tool No. or Description	
Date	Quantity
Clock No.	Dept. No.
Oper.	Mach. No.

Reason	X	Caused By	X	VALUE
Broken		Carelessness		
Damaged		Defective Tools		
Lost		Accident		
Worn Out		Hard Metal		
New Work		Ordinary Usage		

A-9

Foreman

NOTE—No New Tool Furnished Without This Report in Full.

PETITIONER'S EXHIBIT No. 18

REQUEST FOR ADVANCE OF WAGES DUE 5/18

EMPLOYEE'S NAME	DEPT. AND ROLL NO.
AMOUNT REQUESTED	DATE
REASON	

SIGNED	APPROVED	APPROVED
FOREMAN	EMPLOYMENT MGR.	CHIEF TIMEKEEPER

RZ-8 10M 11-41 SPH PRINTED IN U.S.A.

PETITIONER'S EXHIBIT No. 19

AIRCRAFT ENGINE DIVISION

GENERAL GROUP ALLOWANCE

USE FOR: MACHINE BREAKDOWN, LINE TIE-UPS, POWER OFF, ETC.

REASON:

REQUESTED BY

APPROVED

MRZ-371 STANDARDS 2 COPIES TO MPB STANDARDS

DEPT.

GROUP P 9 19

CHARGE ACCT. 90-01

DATE

NO. OF MEN

TIME LOST PER MAN

TOTAL HOURS

RATE PER HR.

AMOUNT

PETITIONER'S EXHIBIT No. 20

RZ-21 PRINTED IN U.S.A.

STANDARD TIME ALLOWANCE

ROUTING.—TWO COPIES DIRECT TO PLANT STANDARDS DEPT. IF STANDARDS WILL APPROVE, ORIGINAL IS SENT TO PAY ROLL

CAUSE.—

APPROVAL

FOREMAN

PLANT MGR.

STANDARDS

DEPT.

GROUP P 9 20

CHARGE

DATE

NO. OF MEN

TIME LOST PER MAN

TOTAL HOURS —

RATE PER HR. —

AMOUNT

CHECKED

PETITIONER'S EXHIBIT No. 21
(Front)

82-304
PTD. IN U.S.A.

HOSPITAL CARD

P-21

Date

Dept. Roll No.

Name

Write "Surname" Here

Write "Given Name" Here

REVISIT DATE

VOID IF DETACHED

PASS TO HOSPITAL

Name

Dept. Roll No.

DEPARTMENT HEAD OR FOREMAN

PETITIONER'S EXHIBIT No. 21
(Back)

DATE AND TIME EMPLOYE REGISTERED "OUT" OF HOSPITAL AFTER TREATMENT

9 21

TIME RECORD

NATIONAL LABOR RELATIONS BOARD

CASE NO. 7-R-1864 BOARD PETITIONER RESPONDENT EXHIBIT NO. 21

IN THE MATTER OF Packard

DATE WITNESS

ETHEL E. FISHER, OFFICIAL REPORTER

BY

THIS PASS TO BE SURRENDERED TO HOSPITAL CLERK, WHEN PATIENT IS DISMISSED, BY COMPANY PHYSICIAN.

Change in Rate Receipt

Name

Roll No.

To Take Effect

Accepted | Rejected

Reason

Rec'd Time Office

Date

RM 7 20M LITHOGRAPH U.S.A.

9-22-

RECOMMENDATION FOR CHANGE IN RATE

Name Roll No. Date

Now Employed as | Dept Name

Reasons for Change

PRESENT RATE		NEW RATE	
Hourly	Half Month	Hourly	Half Month

To Take Effect

Entered Employ of Company

Last Increase Amounting to Took Effect

Foreman | Dept. Head— | Division Mgr. | Employment Mgr.

PETITIONER'S EXHIBIT NO. 23.

This Agreement, entered into this 7th day of October 1942, between Packard Motor Car Company Detroit, Michigan, hereinafter referred to as the Company and the International Union United Automobile, Aircraft, Agricultural Implement Workers of America affiliated with the Congress of Industrial Organizations and its Local No. 190.

Witnesseth: The parties hereto mutually agree as follows:

Article I

Recognition

Section 1. (a) The Company recognizes the International Union United Automobile, Aircraft, Agricultural Implement Workers of America affiliated with the Congress of Industrial Organizations and its Local No. 190, as the exclusive representative of all its hourly rated employees, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment.

(b) In order to promote a harmonious relationship between the employee and the Company it is desirable that all hourly rated employees become members of the UAW-CIO, Local No. 190, within sixty (60) days from date of hiring and maintain their membership therein.

(c) The Company also recognizes that the service employees of the three local service stations known as Jefferson Avenue, Woodward Avenue and Grosse Pointe are represented by the UAW-CIO, Local No. 190, on an exclusive bargaining basis.

(d) The Union will not accept for membership direct representatives of the Management such as superintendents, foremen, or supervisors in charge of any class of labor, time study men, plant protection employee confidential clerks and salaried employees.

Section 2. The Union or its members will not intimidate or coerce employees in any manner or at any time, nor solicit or sign up members on company time.

Petitioner's Exhibit No. 23

Article II

Grievance Procedure

Section 1. There shall be one chief steward in each department or group of departments as determined by the Company and the Union. In departments where multiple shifts are employed there may be one chief steward on each shift.

No chief steward will be recognized before the company is notified.

It is mutually agreed that plant committeemen, district stewards and chief stewards shall be elected or selected by the union from employees currently working for the company.

Section 2. There shall be one district steward for each of six districts as negotiated between the company and the union. There may be additional district stewards for additional shifts, or divisions, as may be mutually agreed between the Union and Company representatives.

Section 3. There shall be a Plant Committee, UAW-CIO, of not more than three employees who are selected by the Union for the purpose of settling grievances with the company representatives. These committee members shall be paid by the Union.

Section 4. There shall be representatives of the Industrial Relations department assigned to each district who will receive from the district stewards those grievances which cannot be handled, or settled, by the chief steward and the department foreman.

Section 5. All grievances will be referred by the chief steward directly to the department foreman except those concerning company policy. Grievances concerning company policy shall be referred by the chief steward directly to the district steward who will take them up with the person in the Industrial Relations department designated for him to contact. He may telephone the grievance in or submit it in writing.

Section 6. If a grievance is not settled by the chief stew-

ard and the foreman, the chief steward will refer the grievance to the district steward who will investigate the grievance and call the person in the Personnel department designated for him to contact and attempt to settle the grievance. The district steward will not contact supervision on any grievance unless he is accompanied by an Industrial Relations man.

Section 7. If a grievance is not settled in this manner the district steward will refer it to the Plant Committee in writing. The Plant Committee will then discuss the grievance with the Management representative.

Section 8. Representatives of the Union and the Company may be called into conference regarding grievances by the mutual consent of the Plant Committee and Management Representative.

Section 9. Regular conferences shall take place between the Plant Committee and the Management representative once each week. At these meetings all grievances which have not been satisfactorily settled will be discussed.

Special conferences may be arranged by the Plant Committee and the Management representative for an emergency grievance.

Section 10. There shall be no unnecessary delay on the part of the Company representatives in settling grievances.

Section 11. Chief stewards shall not be permitted to leave their departments during working hours, or their work, except to telephone a grievance or to discuss a grievance.

Section 12. District stewards shall be permitted to leave their departments upon notifying their foreman for the purpose of settling grievances. They will work on their job all of the time not consumed by grievances.

Section 13. Chief stewards will have the most seniority in their respective department; district stewards will have the most seniority in their respective districts; and the Executive officers of Local 190 of the United Automobile,

Aircraft, Agricultural Implement Workers of America, C. I. O., not exceeding ten in number, will have the greatest seniority next to their chief stewards and district stewards in their occupations, providing nothing in this clause will deprive them of any other seniority privileges granted to employees of this Agreement.

Article III

Discharges, Transfers, Lay Offs

Section 1. The direction of the working force including the right to hire, suspend or discharge for proper cause, to transfer, and the right to relieve employees from duty because of the lack of work, or for other legitimate reasons is vested exclusively in the company, provided that this will not be used for the purpose of discrimination against any employee.

Section 2. The chief steward will be notified in writing before an employee is discharged, reclassified or transferred from his department. The chief steward will have twenty-four (24) hours in which to file a protest and the employee will receive a hearing within the same length of time, if requested.

Section 3. In any reduction of force employees will be laid off as follows:

A. Hourly rated employees

a. Temporary employees, i. e. those who are employed by the Company less than six (6) months shall be laid off first.

b. The next to be laid off shall be those in the department who have less than one (1) year's service who will be laid off according to seniority in their occupation in the department.

c. Employees with one year's seniority, or more, shall have plant-wide seniority in their occupation. Employees laid off from their occupation may be placed in the plant on any job they are qualified to do providing they have sufficient seniority to place

on the job. This provision does not apply at the start of a new model.

d. Employees with ten years or more seniority may be put on any job for which they are qualified.

Section 4. Employees will be hired in the reverse order they were laid off.

Section 5. Employees' seniority shall be computed from the original date of hiring and will be lost only for the following reasons:

a. When discharged from cause.

b. Voluntary resignation.

c. When failing to return to work when notified by registered mail or telegram within five (5) days from date of call.

d. Employees who are absent from work for more than three (3) days without proper notification to the company.

e. Employees who have been laid off more than twelve months.

Section 6. Employees who have lost their seniority by a twelve months' lay-off shall be placed on a preferential list in accordance with the seniority they had previous to the lay off and will be rehired before new employees in their occupation.

Women on the preferential list as of January 1, 1942, who were recalled during 1942, after the expiration of one year of continuous service will be credited with their original seniority computed from the original date of hiring.

Section 7. Those on the preferential list must report at once in person or by wire when called, in order to retain their position on the preferential list. Those who do not report within three (3) days will be dropped.

Section 8. Tempogary employees are those with less than six months of accumulated seniority without a break

of more than twelve months. They are to be placed on the seniority list when they have six months' seniority.

Section 9. Temporary employees who have been laid off will be recalled in the reverse order of their lay off, as required.

Section 10. A list of all seniority standings and classifications for each department will be furnished the chief steward.

Section 11. Should a lay-off become necessary due to shortage of stock or breakdown, employees may be sent home without regard to seniority for the duration of the period.

Section 12. In the event of any department or job being transferred from one part of the plant to another, the employees working on the transferred job will be transferred with the job and retain their seniority.

Section 13. Any employee because of a physical condition acquired on the job who becomes unable to do his work may be transferred to any job that he is capable of doing.

Section 14. Any employee who is called into active service, or who in time of war, volunteers in the armed forces of the United States, or the Merchant Marine shall be given a leave of absence for, and will accumulate seniority during such period of service. Upon the termination of such service he will be reemployed in line with his seniority at work generally similar to that he did just prior to his leave provided he is physically capable and reports for work within 60 days from the date of discharge or release from such service.

Section 15. In case of an indefinite lay off employees shall receive twenty-four hours notice before being laid off.

Section 16. Employees who return to work following an industrial accident or occupational disease shall be allowed thirty (30) calendar days in the plant upon their return to work regardless of their seniority. Following the thirty-day period they shall resume their original seniority standing.

Petitioner's Exhibit No. 23

Section 17. Should a department be discontinued or improvements on machinery create a condition where employees may be laid off, plant seniority shall be applied to the employees affected and they shall be placed in other departments in the plant just as soon as the company can arrange and find room for them.

Section 18. In case of a general lay off, the hours of work will be reduced to thirty-two hours per week in the department before anyone is laid off.

Section 19. The hours may be increased above thirty-two (32) in a department before additional employees are recalled provided there is insufficient equipment to produce the parts required, or to avoid a second shift for a temporary period, or to complete emergency shipments which are necessary for immediate delivery. The addition of a second shift will not be required unless there is sufficient production for each shift to obtain at least thirty-two (32) hours per week.

Wherever practicable, employees will be called back before hours are increased and in all cases the company will negotiate the increase of hours with the Plant Committee before the hours are increased.

Section 20. A minimum of two hours' work or two hours' pay will be given all employees coming to work unless such employees are notified at the address appearing on the company records not to report, or by notice on bulletin boards the previous day. This does not include employees returning following a model change period or a seasonal lay off.

Section 21. Foremen or Assistant Foremen who are demoted and placed on an hourly basis shall resume their seniority with the Company on the same basis as any other employee, providing they formerly worked on that occupation and were promoted to foremanship at the Packard Motor Car Company.

Employees who have been advanced to supervision and who are found unsatisfactory as such will be returned to production.

Petitioner's Exhibit No. 23

Section 22. The Company may employ, in the Manufacturing division, college graduates not exceeding ten in number in any one year for the purpose of training for technical or engineering positions. These employees are not to be retained on production jobs for a period exceeding two years. In any classification where one of these employees is employed, the youngest employee in the classification will be given other work on a plant seniority basis.

Article IV

Plant Rules

Union Notices

Section 1. Before the management puts new rules into effect in the plant, they will be discussed with the Plant Committee. Before new rules are put into effect in a department they will be discussed with the chief steward.

Section 2. If the Union desires to post notices in the plant, such notices will first be submitted to the management for approval. Neither the management nor the Union will make any change in such notice thereafter. Bulletin boards will be provided by the management for notices and no notices will be distributed or posted except on such boards. There shall be no distribution or posting by employees of pamphlets, advertising, or political matter, cards, notices or any kind of literature upon the company's property except as herein provided.

Article V

Seniority of Union Representatives

Section 1. Members of the Union elected to a local union position, or elected by the International Union to do work which takes time from their employment shall, at the request of the Union receive a temporary leave of absence for a period not to exceed one year. On their return they shall be reemployed at work generally similar to that which they did last prior to their leave of absence and with seniority and Packard service accumulated throughout their leave of absence.

Petitioner's Exhibit No. 23

Section 2. Any employee who shall be elected to attend a labor activity necessitating a leave of absence, not exceeding two weeks, shall be granted such leave of absence without affecting his seniority right provided he presents authority from the local to attend this activity.

Article VI

Section 1. (a) The Union agrees to accept the standards of production as established by the company. The Union also agrees that members of the Union shall perform their duties in accordance with the established standards of time and quality.

(b) The policy regarding speed of operation shall be discussed with the Chief Steward. The employee shall not be held responsible for time lost while he is in the plant for breakdown or any slowing up of production that is not the employee's fault.

(c) This does not prohibit the company from effecting economies by the installation of improved methods or design.

Article VII

Leave of Absence

Section 1. Leave of absence granted to any employee shall be approved by both the company and the union.

Article VIII

Overtime.

For the duration of the war the overtime policy will be in accordance with the President's Executive Order No. 9240, Regulations Relative to Overtime Compensation, as amended by Executive Order # 9248 which reads as follows:

"(a) No premium wage or extra compensation shall be paid to any employee in the United States, its territories or possessions, for work on Sunday except where such work is performed by the employee on the sixth or seventh day worked in his regularly scheduled workweek and as hereinafter provided.

Petitioner's Exhibit No. 23

(b) Where because of emergency conditions an employee is required to work for seven consecutive days in any regularly scheduled workweek a premium wage of double time compensation shall be paid for work on the seventh day.

(c) Where required by the provisions of law or employment contracts, not more than time and one-half wage compensation shall be paid for work in excess of eight hours in any day or forty hours in any workweek or for work performed on the sixth day worked in any regularly scheduled workweek.

(d) No premium wage or extra compensation shall be paid for work on customary holidays except that time and one-half wage compensation shall be paid for work performed on any of the following holidays only:

New Year's Day
Memorial Day
Fourth of July
Labor Day
Thanksgiving Day
Christmas Day"

At the conclusion of the war the provisions covering payment for overtime as contained in Article IX of the Agreement dated October 22, 1940 shall be restored.

Article IX

Minimum Rates

Section 1. New employees will be hired at a rate not more than ten cents (10¢) below the established rate for their labor classification and shall receive a five cent (5¢) increase within thirty (30) days from date of hiring and an additional five cents (5¢) increase when qualified for full production.

Section 2. The minimum rate policy does not apply to trade apprentices or learners in tool making, die making, pattern making, forge die making and machine repair until they become journeymen.

Petitioner's Exhibit No. 23

Section 3. Students employed to learn work which requires more than four weeks' training may be employed for a period of six weeks at 15¢ below the minimum rate and the classifications to be included in this arrangement to be a matter of negotiation between the company and the union.

Section 4. Women employed to learn work which requires more than four weeks' training may be employed for a period of six weeks at 15¢ below the minimum rate and the classifications to be included in this arrangement to be a matter of negotiation between the company and the union.

Section 5. Apprentices in tool making, die making, machine repairmen or pattern makers will not exceed the ratio of one to ten of journeymen for the duration of the war.

Article X

Night Work

Section 1. All employees working in the afternoon or midnight shift will receive five cents (5¢) per hour in addition to their regular rate for all hours worked on these shifts.

Section 2. When more than one shift is operated in a department occupational seniority will govern preference of shifts.

Article XII

Section 1. For the duration of the war it is very essential that every employee contribute his best effort to those fighting at the front so that they may have materials and equipment so necessary to their success. Therefore, during the life of this Agreement any employee who is found smoking during working hours, or wasting time away from his work station, will be discharged.

Section 2. Any employee who protests he has been wrongly accused may have a hearing with the Plant Committee and Management representative within twenty-four hours of the time he was discharged.

Petitioner's Exhibit No. 23

Section 3. In consideration thereof, the company agrees that a five-minute rest period will be allowed during each half day work period. Smoking will be permitted in designated areas during each rest period. Refreshments will also be available during the second period, for those working a ten and one-half hour shift.

Article XIII

General

The Union will not cause, or permit its members to cause, nor will any member of the Union take part in any strike, either sit-down, stay-in, or any other kind of strike or other interference, or any other stoppage total or partial, of any of the company operations until all the grievance procedure as outlined in this Agreement is exhausted, and not even then unless sanctioned by the International Union.

The Management will not cause nor sanction a lock-out until all the grievance procedure as outlined in this Agreement is exhausted.

This Agreement shall supersede the Agreement dated October 22, 1940 and shall become effective 7th of Oct. 1942 and remain in full force and effect until six months after the conclusion of the war.

Executed the day and year first above written.

For the Union	For the Company
OURT MURDOCK	GEORGE T. CHRISTOPHER
President	President
JOHN K. McDANIEL	C. E. WEISS
PATSY ZOMBO	A. G. DENISON
MELVIN BISHOP,	CARL BINNS
Reg. Director	J. E. LOCHER
LEO LAMOTTE	

PETITIONER'S EXHIBIT NO. 24.

Reissue Dec. 14, 1944

Shop Rules and Penalties for Violations.

While it is not the desire of the Packard Company to unduly restrict the liberties of anyone, it is essential, as well as desirable for the welfare of all employees, that rules relating to proper conduct during working hours be enforced.

We are not attempting to list all plant rules in this bulletin, but some of those which have been most frequently broken and which today are causing a very unsatisfactory condition.

There is no intention on the part of the Company to void the provisions of the contract between the Company and the Union pertaining to collective bargaining and cases are to be handled as in the past.

Where the penalties are fixed, we expect negotiations to be limited to whether or not the rules have been broken. Unusual circumstances are to be given consideration.

Where the penalties are on a "to be negotiated" basis, we expect both stewards and supervision to use proper judgment for the betterment of plant conditions.

Rules	Penalties
1. Willful destruction or mutilation of company tools, machines, materials, equipment, or bulletins.	Discharge
2. Stealing of Company property or that of other employees.	"
3. Fighting — any employee striking a blow.	1 week—2 weeks To be negotiated
4. Intentionally ringing clock cards of others.	1 week—To be negotiated

Petitioner's Exhibit No. 24

5.	Gambling.	3 days, 6 days To be negotiated
6.	Being drunk on Company premises at any time.	Sent home for balance of shift. 3— days
7.	Bringing or selling liquor or having it on your person.	1 week
8.	Sleeping during working hours.	1 day, 2 days, 3 days
9.	Employees leaving their department during working hours and without permission or legitimate reason.	1 hour 1 day, 3 days
10.	Lining up at clock alley in their own dept. before quitting time.	Minimum 15 minutes
11.	Smoking in restricted areas.	1 day, 2 days, 3 days
12.	Possession of unlawful weapons on Company property at any time.	Discharge

13. Employees more than ½ hour late in returning to plant after lunch period will not be permitted entrance without permission of his foreman.

Where more than one penalty is indicated, the first is for the first violation, the second is for the second violation, etc.

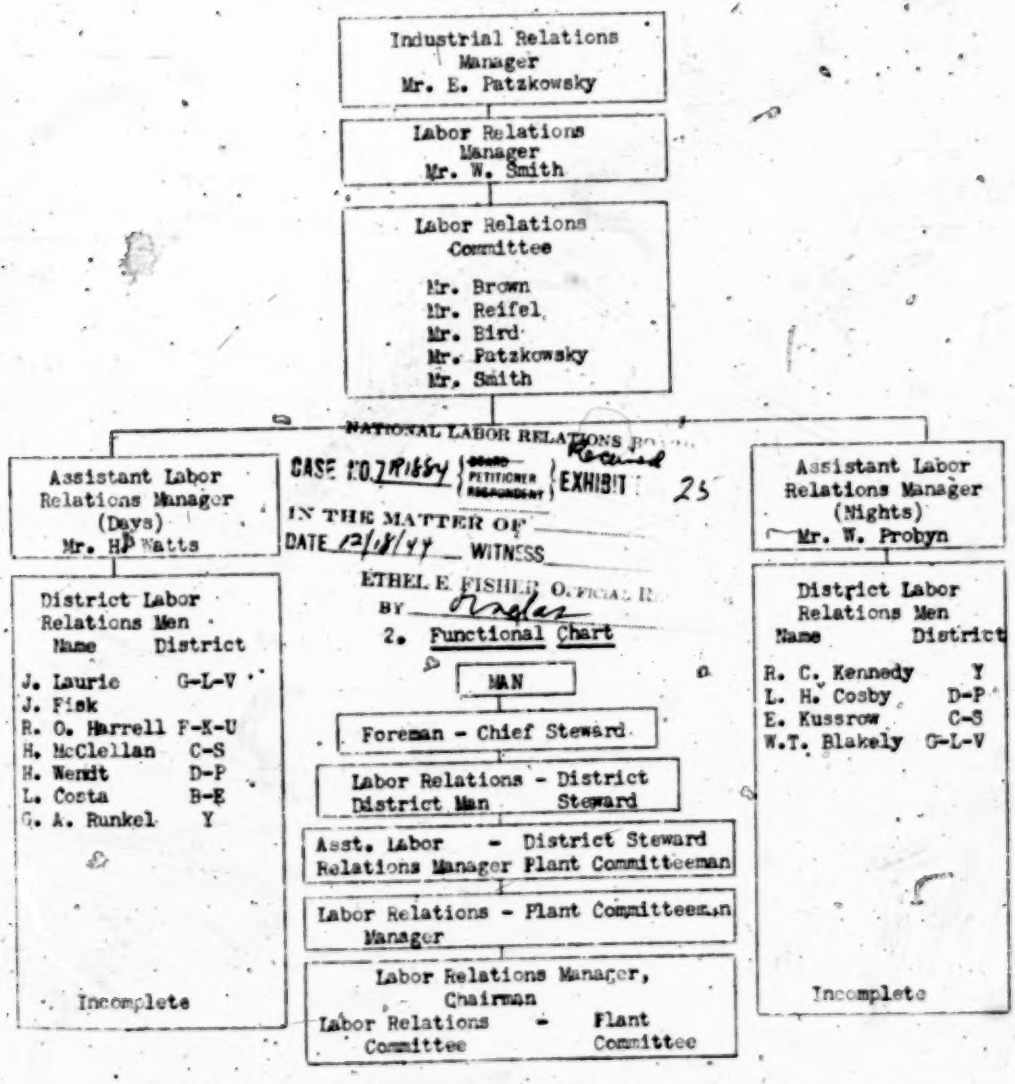
Signed by:

Labor Relations Committee	Union Plant Committee
E. PATZKOWSKY	L. DEBEARN
G. REIFEL	P. ZOMBO
R. BROWN	C. MURDOCK
W. SMITH	J. McDANIELS
F. BIRD	

P-25
12/2/44

SUBJECT #1 - Labor Relations Division

1. Organizational Chart



NATIONAL LABOR RELATIONS BOARD
CASE NO. 7-R-1884 BOARD PETITIONER RESPONDENT EXHIBIT 25
IN THE MATTER OF
DATE 12/8/44 WITNESS
ETHEL E. FISHER OFFICIAL R
BY

2. Functional Chart

ISSUED TO DEPARTMENTAL SUPERVISION AND DISCUSSED AT FOREMAN'S MEETING FRIDAY Nov 24 -- 1944

PETITIONER'S EXHIBIT NO. 26.

Foreman Training
1939—1944

Subject Titles by Time Periods

1. 1939-1940
   - a. Distribution and Reading Aloud of the New Contract
   - b. Discussion of the Contract
   - c. Fundamentals in a Business
   - d. Getting Along Better With People
   - e. Safety and Accident Prevention
   - f. Raw Materials in the Automotive Industry
   - g. Taxation—Income and Public Welfare
   - h. Men and Money in Business
   - i. Management in Business
   - j. Waste I—General
   - k. Waste II—Present and Fu ..re
   - l. Personal Improvement
   - m. Organization—General
   - n. Principle—General Policies
   - o. Amendments to the Social Security Act
   - p. The Learning Process
   - q. Deputizing
   - r. Speech Habits
   - s. Foreman-Employee Relationships
   - t. Discipline
   - u. Developing Company Understanding
   - v. U. S. Constitution—Our Constitutional Rights
   - w. Morale
   - x. What It Takes to Be a Foreman

2. 1940-1941
   - a. Getting a Full Day's Work
   - b. Promotions and Transfers

c. Work Classifications and Rates of Pay
d. Our Labor Relations
e. Giving Attention to the New Man
f. Departmental Cleanliness
g. Employee Investigation and Identification
h. Selecting and Training Additional Supervision
i. Additional Labor Required for Defense Projects
j. Safety
k. Emotions
l. Time Wasted on the Job
m. Selective Service Deferments
n. The Need for Planning
o. The How of Planning
p. Promotion from Within and Training
q. Cooperation and Coordination of Effort

3. Special Series in Summer of 1941
   a. The Training Plan
   b. Application and Understanding of the Plan
   c. Timing the Job
   d. Records Required
   e. Advancement or Upgrading
   f. Teaching Procedure

4. 1941—Up to Present
   a. Overtime—December 7, 1942
   b. Grievances—December 21, 1942
   c. Labor Policy—January 4, 1943
   d. Government Control of Manpower—January 18, 1943
   e. Plant Protection—Emergency Control
   f. Federal Income Tax—1942
   g. Selective Service—March 1, 1943
   h. Presidential Order 8802—March 15, 1943
   i. Replacement Schedules—March 29, 1943

Petitioner's Exhibit No. 26

j. Safety and Cleanup—Physical Side
k. Manpower Control—April 26, 1943
l. Employment of Women—May 10, 1943
m. A Morale Building Program—May 24, 1943
n. The Packard Induction School
o. Current Tax Payment Act
p. Relations With Employees—July 5, 1943
q. Training to Meet Company Problems—July 19, 1943
r. Safety Committee and Plan
s. The New Tax Law
t. Departmental Problems—August [illegible], 1943
u. Answers for Some Departmental Problems—September 13, 1943
v. Plant Efficiency
w. Material Control
x. Inspection
y. Tools and Tool Grinding
z. Plant Engineering

a. Processing and Layout
b. Plant Loafing and On the Job Training—December 20, 1943
c. U. S. Army Report
d. Foreman Responsibility and Authority—January 17, 1944
e. Plant Guards and Discipline—January 31, 1944
f. Time Study Planning
g. Federal Income Tax—1943
h. Selective Service Schedule—March 13, 1944
i. Job Relations Training—March 27, 1944
j. Quality Control
k. Army and Navy Inspection
l. Ceiling of Manpower

PETITIONER'S EXHIBIT NO. 27.

July 3, 1944

Foreman Training Subjects

The new course in Foreman Training is now under way, with the first week covering introductory material. Starting next Thursday the first nine (9) selected subjects will be presented. The subject titles are:

1. Understanding Problem Employees
2. Handling Problem Employees
3. The Qualities and Techniques of Leadership Selecting and Upgrading Employees
4. The Foreman's Attitude Toward His Job
5. Handling Grievances
   The Foreman and the Shop Steward
6. Developing Job Satisfaction
7. Increasing the Personal Efficiency of Executives and Foremen
8. Maintaining a Two-Way Channel of Communication Between Top Management and Foremen
   Maintaining a Two-Way Channel of Communication Between Top Management and Employees
9. Psychological Aspects of Delegating Authority and Responsibility

Your cooperation is fully appreciated.

Work to Win!

(Sgd.) R. L. PACKARD
R. L. Packard -fb

PETITIONER'S EXHIBIT NO. 28.

National War Labor Board

May 18, 1944

Resolution

Whereas, the Secretary of Labor has certified to the National War Labor Board for appropriate action the following dispute cases involving unions representing foremen and other supervisory employees:

Murray Corporation of America (Case No. 111-1882-D)
Briggs Manufacturing Company (Case No. 111-4746-D)
Chrysler Corporation (Case No. 111-4747-D)
Republic Steel Corporation (Case No. 111-4748-D)
Maryland Drydock Company (Case No. 111-5190-D)
Packard Motor Car Company (Case No. 111-5436-D)
Bohn Aluminum and Brass Corporation (Case No. 111-5799-D)
Baldwin Locomotive Works (Case No. 111-6801-D)

Be It Resolved:

1. That, in accordance with the opinion of its General Counsel that the foregoing disputes are disputes between employees and their employers within the meaning of the War Labor Disputes Act, the Board has jurisdiction to consider and to determine, pursuant to the provisions of the War Labor Disputes Act and Executive Order No. 9017, the foregoing disputes, exclusive of issues concerning bargaining rights and alleged discriminatory discharges under the National Labor Relations Act;

2. That, in view of the difficult questions of policy involved in determining in what manner the Board should exercise its jurisdiction, and because the records in the foregoing cases do not contain sufficient facts upon which to decide such policy questions, the Board will appoint a panel to hear the representatives o the companies and of the foremen's organizations involved in the foregoing cases, to conduct such supplementary inquiries or investigations as the panel may deem desirable, and to make a factual report to the Board on the following matters with respect to each of the foregoing cases:

Petitioner's Exhibit No. 28

(a) The nature and gravity of any unresolved grievances of the foremen;

(b) The present or potential procedures available for the settlement of these differences without the necessity of further governmental action;

(c) The history and effects of any collective relationships between the foremen's organizations and the companies;

(d) The nature and composition of the foremen's organizations in each of the plants involved, and the duties performed by the various types of supervisory employees within the plant, and

(e) Any other facts which the panel might find to be of importance to the Board in determining what action it should take in the foregoing cases.

Representing the Public:

WILLIAM H. DAVIS, Chairman
GEORGE W. TAYLOR, Vice Chairman
LLOYD K. GARRISON
EDWIN E. WITTE

Representing Labor:	Representing Industry:
ROBERT J. WATT	VINCENT P. AHEARN
JAMES A. BROWNLOW	CLARENCE O. SKINNER
CARL J. SHIPLEY	FREDERICK S. FALES
JOHN BROPHY	J. HOLMES DAVIS

Advance Release — Advance Release

Office of War Information
National War Labor Board

For release in morning papers — B-1531

Friday, May 19, 1944

The National War Labor Board today unanimously ordered establishment of a panel to hear representatives of eight companies and three unions involved in foreman disputes pending before the Board.

The Board on May 9th had voted unanimously to take jurisdiction over the disputes exclusive of issues concerning bargaining rights and alleged discriminatory dis-

charges under the National Labor Relations Act. These two issues are within the jurisdiction of the National Labor Relations Board.

The Board acted on the case today following termination of the strike of the Foremen's Association of America, one of the unions involved, in 13 Detroit plants. The Board had refused to act while the men were on strike.

The National Labor Relations Board recently decided that foremen were "employees" under the meaning of the Wagner Act. The War Labor Disputes Act provides that the term "employees" shall "have the same meaning as in Section 2 of the National Labor Relations Act."

The panel, in addition to hearing the parties on the specific issues certified to the Board, such as grievances, wages and seniority, will make such supplementary investigations as it may deem desirable in order to present a factual report to the Board on certain general questions involving foremen disputes.

The Foremen's Association of America, an independent union, is involved in the disputes with Murray Corporation of America, Briggs Manufacturing Company, Chrysler Corporation and Packard Motor Car Company, all of Detroit, Michigan; Republic Steel Corporation of Cleveland, Ohio, and Bohn Aluminum and Brass Corporation, Adrian, Michigan.

The Marine and Shipbuilding Workers, CIO, is involved in the dispute among foremen at the Maryland Drydock Company, Baltimore, Maryland.

The International Association of Machinists, AFL, is involved in the dispute among foremen at the Baldwin Locomotive Works of Eddystone, Pennsylvania.

The text of the Board's Resolution, passed unanimously, is attached.

Received
Jun 7 1944
Foreman's Association
of America
(National Office)

312
5/18/44

PETITIONER'S EXHIBIT NO. 33.

Packard Motor Car Company.

Labor Relations Dept.

Plant Committee Bulletin.

Subject: Agreements reached by Management and Union at Plant Committee Meetings as follows:

Tuesday, Nov. 21st, 1944:

(A) Job Setters (transfers)

Provided a job setter had sufficient seniority, he may take a demotion back in his department, to any former occupational rate he can handle. On the other hand, if he desires to transfer to another department or division, as a job setter, without change of rate, he may do so on a plant wide basis.

(B) Grievance Procedure:

In order to relieve the Management and the Union Plant Committee of the burden of discussing cases not handled according to procedure, the following rules were adopted:

1. No district stewards will be permitted to discuss grievances with either Mr. Patzkowsky or Mr. Smith directly. They will follow the ritual of contacting the Division Labor Relations Man first, settling the grievance there if possible. Next, if necessary, Mr. H. Watts, (Days) or Mr. W. C. Probyn, (Nights). A Plant Committeeman is available for the meeting with the Assistant Labor Relations Manager (Watts and Probyn) at all times, when called.

   If further recourse is desired, then a request should be made to the Recording Secretary, Local 190, for an appeal at a meeting of the Plant Committee. (The above policy was recommended by District Stewards.)

2. The great majority, 90%, of the grievances and queries should be disposed of by the Division Labor Relations representative, as his authority is decisive

Petitioner's Exhibit No: 33

in all cases, except those involving rates and general plant-wide company policy.

3. Only those persons specifically called, (except the members themselves), shall be permitted to attend Plant Committee Meetings. This will tend to expedite business and avoid interruptions.

(C) Lunch Period:

Employees going to Lunch at any but the specified Lunch period, without permission, shall be properly disciplined.

Wednesday, Nov. 22, 1944.

(D) Movement of Machinery:

It has been the rule in the past and will continue to be the rule, until officially revised, that where certain machinery is moved within a department or to another department or division, the operator accompanies the machine without a change of rate.

Monday, Nov. 27th, 1944

(E) Polishers:

The International Union was in on a supplementary agreement, dealing with application of occupational seniority in the case of Polishers. After discussion, it was agreed that there would be no supplementary agreements on any group of people, except those now covered in the present Contract. In carrying out the Contract, it was agreed that Management "directs the working force" in accordance with Article III, Section I; and in case of disagreement, the regular grievance procedure would prevail. This will be interpreted to mean that the Foreman's decision as to adaptability is decisive.

For the Company	For the Union
W. H. SMITH	LOUIS deBEARN
E. PATZKOWSKY	JOHN C. McDANIEL
F. BIRD	PAT ZOMBO
R. BROWN	CURT MURDOCK
G. REIFEL	

PETITIONER'S EXHIBIT NO. 34.

YF-75, Geo. Klein—YF Dept.

Mr. Geo. Klein had charge of 190 to 220 men for 2 years and 9 months as an assistant foreman in YF Dept. He was in complete charge on the afternoon shift, there being no other foreman or assistant foreman in this department on his shift. His only means of advice were to call Mr. James Wilkins at his home. He was responsible for all motor assembly on the afternoon shift. He was made foreman 8-31-43.

PETITIONER'S EXHIBIT NO. 35.

YF-76, Wm. Wofford—YF-2 Dept.

Mr. Wm. Wofford was requested by management to operate in a supervisory capacity in YF Dept. in May of 1942. He performed the duties of an assistant foreman for 14 months on a 711 classification and paid dues to the CIO local 190 until July 26, 1943 when he was made an assistant foreman.

PETITIONER'S EXHIBIT NO. 36.

YF-78, Roy Hebson—YF Dept.

Mr. Hebson was requested by management to assume responsibility of YF-4 Dept. on July 15, 1941. He performed the duties of an assistant foreman for 18 months on a 711 classification. He has had as many as 64 men under his supervision during this time. He was alone on this shift from 12:00 midnight until 8:00 A. M. He was made an assistant foreman on February 15, 1943. He paid his dues to the CIO Local 190 up until February 15, 1943.

PETITIONER'S EXHIBIT NO. 37.

YF-72, Julius C. Smith—YF Dept.

I was requested by management to act as assistant foreman in YF-Dept. supervising from 30 to 80 men on August 1940. I operated as such for 11 months at $1.26 (same rate as the men) per hour. During this period I paid dues to CIO local 190. I asked management repeatedly during this period to change my classification. Their answer was only a promise. On 6/2/41 management agreed to give me an assistant foreman's rating at $1.41 per hour handling 90 to 116 men. I was on this classification for two years 9 months. I was made foreman March 27, 1944 at $275.00 per month. I was instrumental in setting up on tooling this department up to its present stage.

PETITIONER'S EXHIBIT NO. 38.

YF-79, Robert Nolan—YF-4 Dept.

Mr. Robert Nolan was requested by management to operate YF-4 Dept. in August 1940. He handled from 40 to 60 men under a 114 Classification until August 16, 1942. For 2 years he performed the duties of an assistant foreman on a 114 Classification and paid dues to the CIO Local 190. He was made an assistant foreman on August 16, 1942.

PETITIONER'S EXHIBIT NO. 39.

YF-71, Wm. Bradley—Foreman YF Dept.

I was requested to act as assistant foreman on 5/5/41. I operated as such at $1.26 per hour until 6/13/41 (5 weeks) during which time I paid CIO dues. After this time elapsed I asked management to change my classification. Before they decided to comply they called me into the office three times in one afternoon. First, they said two weeks, then one week, and finally changed classification on same day to $1.38 per hour. I supervised 280 men. Was made foreman 7/23/42 (13 months later) at $265.00 per month.

5 weeks 5/5/41 to 6/13/41 at $1.26 per hour—
Gang leader

13 months 6/13/41 to 7/23/42 at $1.38 per hour—
Asst. foreman

6 months 7/23/42 to 1 - 43 at $265.00 per month—
Foreman

1 - 43 to present at $288.75 per month—
Foreman

PETITIONER'S EXHIBIT NO. 41

National War Labor Board.

Verbatim Transcript.

Meeting: Public Hearing—the Foremen's Association of America et al.

Date: May 17, 1944.

Time: 10:12 a. m. to 11:10 a. m.

Place: Room 5341, Department of Labor Building, Washington, D. C.

Reported by
Office for Emergency Management
Division of Central Administrative Services
Minutes and Reports Section

Public Hearing Before the National War Labor Board in the Case of the Foreman's Association of America, Held in Hearing Room 5341, Department of Labor Building, Washington, D. C.

Wednesday, May 17, 1944.

Board:

Public Members

Mr. William H. Davis, Chairman
Dr. George W. Taylor, Vice Chairman
Mr. Lloyd K. Garrison
Mr. Dexter Keezer
Mr. Edwin E. Witte

Labor Members

Mr. John Brophy
Mr. James Brownlow
Mr. Delmond Garst
Mr. Carl Shipley

Petitioner's Exhibit No. 41

Industry Members

Mr. George K. Batt
Mr. Bayard Colgate
Mr. J. Holmes Davis
Mr. Frederick S. Fales
Mr. John P. McWilliam
Mr. George Mead
Mr. Clarence Skinner
Mr. James Tanham

Representatives of Foreman's Association:

Mr. Carl Brown
Mr. Frank Elliott
Mr. James E. Fahnestock
Mr. Robert H. Keys
Mr. Thomas E. Leah
Mr. Wm. Mitchell
Mr. Ross W. Ray
Mr. W. W. Russin
Mr. Nelson
Mr. William Sanders
Mr. William T. Stull
Mr. Robert Turnbull

Others:

General Henry H. Arnold
Dr. John R. Steelman
Rear Admiral Ernest M. Pace

(The hearing convened at 10:12 A. M.)

Chairman Davis: All right, gentlemen. We are here this morning on an order to show cause addressed to Mr. Keys, the president of the Foreman's Association of America, by telegram of May 16: (Reads)

"The National War Labor Board Acting Pursuant to Its Powers and Duties Under the War Labor Disputes Act and the Executive Orders of the President Unanimously Directs You and the Members of your Executive Board to Appear at a Hearing on Wednesday, May 17, 1944, at 10:00 A. M. in Room 5341, Department of Labor Building, Washington, D. C., to Show Cause Why the Board Should

Petitioner's Exhibit No. 41

Not Immediately Take All Steps Necessary to Invoke the Sanctions and Penalties Provided by the War Labor Disputes Act and the Executive Orders of the President to Require the Striking Foremen to Return to Their Jobs in Compliance With the Board's Previous Orders."

Now, Mr. Keys, I see you are present; and have you your board here?

Mr. Keys: Yes, sir.

Chairman Davis: And I understand that the board is empowered and prepared to take action. Is that right?

Mr. Keys: Well, Mr. Chairman, we would, of course, like to discuss this aeronautical situation.

Chairman Davis: I want you to discuss the whole thing, but I mean that there are enough people here to take action. That's all I want to know.

Mr. Keys: Yes, the entire board is present.

Chairman Davis: Thank you. Now, we have asked the Secretary of War to send someone over here to state the relation of this strike to the war effort, and we have been told by the Secretary that General Arnold will come over and state to the Board and the meeting the facts on that subject. I mention that because when General Arnold comes in, we will interrupt the proceedings to hear what he has to say.

As to the time of the discussion, Mr. Keys, in an ordinary case where there are two sides, we have a rule of 45 minutes. Of course, in this case there is really only one side; but—I will put it this way: We would like to have you say what you want to say; but we would like to keep it within this morning's session if we can.

As you know, we don't go into the merits of the dispute in these hearings. The hearing is to find out—just as the telegram says—to show cause why the strike is not called off; or why in the failure to call it off the Board should not immediately proceed under the War Labor Disputes Act.

Now, with that introduction, will you go ahead, Mr. Keys.

Mr. Keys: Yes, Mr. Chairman.

Mr. Chairman and Members of the Board: I don't believe that it is necessary for me to sum up at this time our

activities in the Association so far as attempting to obtain legal redress of the grievances of our members. The Board is aware of the fact that for many months we have journeyed to Washington and sought legal recognition. In fact, I might say we have pleaded for legal recognition on many occasions.

The Board is also aware of the fact that in the month of March I sent to the Board a series of telegrams advising them of the situation in the Detroit area and asking them at that time to please accept jurisdiction over our grievances to the extent that it would probably prevent any participation in strike action by our members.

On the 29th day of March I received a telegram from Mr. Garrison stating that our cases were on the schedule for hearing that week. I immediately notified all of our chapter officers and our members of that telegram. We did not hear any more regarding the cases and haven't heard anything to this date.

We have been advised in your telegram that the Board will not accept before it the question of bargaining rights. We appreciate your position on that matter, due to the infamous Maryland Dry Dock decision; but, gentlemen, this is a fight for bargaining rights as employees. We have referred to the membership of this association all correspondence between the national officers and the War Labor Board, and in each instance the same question arises and we can only truthfully answer it one way and that is: "You do not have any bargaining rights legally."

We do know that the National Labor Relations Board has indicated strongly a desire to have the employers voluntarily bargain with us. We know and we feel at least that this board is desirous of the same. But, unfortunately, gentlemen, the employers who prate so loudly of patriotism cannot find it within their power to stop this strike and have consistently refused to do so by refusing to even have a conference. They have never questioned us as to what we want to talk to them about, but they have said, We will not meet with you, period.

Now, gentlemen, when there are 3500 Foremen on strike, as we have in the Detroit area, and another 20,000 or more

eager and anxious to participate in this strike, you cannot very easily—and I do not mean this to indicate that we are afraid to attempt to do so, but I mean it exactly as it is, that we have been advised and instructed by the membership in the form of resolutions that unless the employer will hold this conference so that we can at least discuss our conditions of employment with him, whether he legally recognizes us or not, they will not return to work.

Following the series of telegrams that I spoke of a moment ago, we sent a committee to Washington. That committee remained in Washington for a period of three weeks. They were in conference with Dr. Steelman, perhaps some of the members of this board; and they indicated to this board the position of the Foremen's Association.

Frankly, gentlemen, we do not relish this strike. We do not feel that it is right from a patriotic standpoint. But, frankly, we cannot blame anyone but the Government. They have failed to act in the many, many months of repeated appeals and requests and, you might say, demands, to take some step that would prevent this situation; and they have failed to do so.

We are being criticized, we are being condemned. We are referred to as a menace. Prior to this strike, the Foremen were referred to as the geniuses of the production line. The fact that Berlin was being bombed, the fact that the country was in a position to win the war, was a credit to the workers of America, including the Foremen. The fact that our plane production was excellent was fine. But no one gave consideration to the fact that in establishing this production schedule, the Foreman was contributing as a class of workers as much or more than any other class in the country. They were contributing hundreds of thousands of hours of overtime. They were contributing everything they possibly could contribute; and they were daily seeing their fellow foremen discharged, discriminated against, threatened, intimidated, coerced. And we, as officers, realized it and came before the Government of the United States and asked them to please do something, and they failed to do it.

Petitioner's Exhibit No. 41

That, gentlemen, sums up our position today.

Chairman Davis: Mr. Keys, there are one or two questions I would like to ask you. In the first place, as I understand it, there was no strike vote taken by the Association in accordance with the Act of Congress; and if that is true, isn't the Association rendering itself liable by this strike to civil damages under the War Labor Disputes Act?

Mr. Keys: Well, Mr. Davis, of course, I wouldn't say. That is a legal question and should be answered by our attorney; but I will answer it, giving you my opinion.

Since the War Labor Board failed to take jurisdiction of the Foremen's disputes prior to this strike, our position, of course, was that we were not covered by the War Labor Disputes Act; and this strike took place, of course, before your jurisdictional decision.

Chairman Davis: I see. Well, now, actually we did finally take jurisdiction and you were notified of that fact. You and I have had talks about it—I mean, talks about these delays and so forth. I won't go back into that, but the fact is that on May 9th we sent you this telegram: (Reads)

"The National War Labor Board Has Taken Jurisdiction of Pending Disputes Between Foreman's Association and Employers Exclusive of Issues Concerning Bargaining Rights and Alleged Discriminatory Discharges Under the National Labor Relations Act But the Board Will Take no Further Action of Any Sort Until Informed That the Strikes Have Been Terminated and the Men Are Back at Work."

The telegram adds; "Termination of the Strikes Should Be Effected Immediately."

Of course, you understand you indicated in what you said—that we have no jurisdiction of anything that is within the jurisdiction of the National Labor Relations Board. The National Labor Relations Board, as I understand it, has held that they could not make available to the Foremen—to your organization—the compulsion on the employer to make him bargain that the Wagner Act provides in other cases. That is the substance of it. So they say, We can't compel the employer to bargain with this union.

Petitioner's Exhibit No. 41

We then took jurisdiction of the matter, because we regarded it as a dispute substantially affecting the war effort and one in which, therefore, the Board had a duty to settle the dispute by order establishing the terms and conditions of employment that would prevail until further order of the Board.

Now, what gets me down about it, Mr. Keys, is that at that time, you see, your people continue the strike, thereby shutting off, I think, the only possibility of relief that you people have in your very difficult situation; because you understand that this Board must go on under the statute and apply the sanctions of the statute.

If seizure is effected under the statute and then any interference with the operation by the Government becomes a crime, it couldn't possibly do you people any good, because under the statute when seizure occurs the plant must be operated under the terms and conditions that existed at the time of seizure. The War Labor Board is shut out of it.

It is true that under such conditions the parties to the dispute can still negotiate, and it is true that the governmental agent operating the plant could still jointly with the union, if they wanted to, propose to the War Labor Board some settlement; but it seems to me so plain that any refusal on your part to stop this strike is going to take the whole thing out of our hands. I don't know where you are going to get any relief.

Mr. Keys: Well, Mr. Chairman, how can we resolve this situation when it's a bargaining right to fight, you might say; and you say that the Board cannot discuss that.

Now, do you want the foremen to come before this Board every time there is a discharge or a dismissal or demotion—

Chairman Davis: Oh, no.

Mr. Keys: —or grievance?

Chairman Davis: Oh, no; certainly not. I mean, we don't want, of course, to go into the details at all of the dispute; but we have the duty and the power under the Act, in a case of this kind, to establish by order the terms and conditions of employment. Now, presumably, we are to do that, after due consideration, in such a way as to es-

tablish in the plant the terms and conditions of employment that would work from day to day.

Mr. Keys: Do I interpret that to mean—shall we say a grievance procedure, for example?

Chairman Davis: Well, I can't answer that. As you know—

Mr. Keys: I am only asking you the questions that we are being asked by these foremen.

Chairman Davis: Well, I know; but I will answer you this way, Mr. Keys. You know very well that this board not only can't make any commitment ahead of time but also, if you were sitting on this board you wouldn't have any judgment about the merits of it until you had heard the two sides; so we will keep off of that.

But I do say this to you, that the only way you can get a grievance machinery is through the War Labor Board—no question about that.

Now look, Mr. Keys, what is the alternative? I am not going to talk about patriotism or anything of that kind. The unfortunate aspect of these cases is that everybody always things that it is the other fellow that is unpatriotic. It doesn't get you anywhere.

Now I am talking about practical affairs, and the alternative is that here this Union of yours, starting out with a very difficult situation which you have explained to us, fighting for what you regard as fundamental rights—the fellows on the other side are pretty fundamental about their ideas too, and they are as far apart as they can be.

Now, you handicap yourself by putting the United States Government on the other fellow's side and you just can't win because if you insist upon going on with this thing, your strike will be broken. The work will be done, the inspections will be made; there is no doubt about that. I don't need to say that to a man of your caliber. You know very well you have got a tough enough fight on your hands with the employers, but if you take on the United States Government in time of war, you are licked. There is no question about that.

Now, what I am saying to you is this, and, as you know, I am saying it with certainly no feeling of hostility to your Union. That is, the course before you is as plain as the

nose on your face, if you want to get anywhere with these rights that you assert, and that is to call off that strike today and get back to work and come before this Board and go ahead with the proceedings as we have proposed.

Now, you don't bind yourself by that, except to go ahead before us. My Lord, man, if you ever start before us and then you come to the conclusion that you made a mistake, at any rate you can say to your people, "We have followed every course there was to follow and we are not fighting the United States Government."

I mean, it just seems to me so plain that there is no other course for men of your level. If I may say so, you fellows are at a level in the labor world, or the management world—whichever you say, on the borderline—a high level, and the country expects more of you than they would of people at a lower level, maybe.

Mr. Keys: I might add there, Mr. Chairman, that we expect to give the country everything we possibly can too. We always have and we always will.

You are probably aware of the fact that on the 9th of May we signed a collective bargaining contract with the Ford Motor Company. The production record of the Bomber Plant has been cited by the United States Government as being excellent. Perhaps the country doesn't know that the foremen in the Bomber Plant, commonly called the Willow Run Plant, have been members of our organization, 99 per cent strong, since the plant was built.

We have proven to the country and to the employer that organized foremen can and will produce.

All we are seeking from the employer is the right to sit down and discuss and, through collective bargaining, eliminate our differences.

Chairman Davis: That is right.

Now look. Here is a fight where men are citing what they regard as fundamental living, the right to assemble and freedom of speech. That is the way they feel about it.

The companies, on the other hand, are very much way off to the other side and they are concerned with the rights of management, and so forth. We won't go into that. But you know, as I say, that the positions are very far apart.

Well now, I think this is the kind of a dispute that in peace-time could only be resolved on the picket line. That is, by a show of economic force. I say that from my experience as a mediator of labor disputes. It is that kind of a dispute, and I suppose that in peace-time the long-suffering American public would again have to endure a great industrial dispute disrupting its normal customary habits until one side or the other was licked.

That would be the story in peace-time, wouldn't it? But in war-time we just can't do that.

The unfortunate thing, Mr. Keys, is that in war-time the whole force of society—public opinion and government, and the Act of Congress—ranges itself on the side, or, well, against the men who are on strike.

Now that is unavoidable and to my mind it is just too bad. You can't win under those conditions.

Now here is this very real dispute. It can never be resolved, Mr. Keys, except by careful, detailed work. It can't be resolved by an order to bargain. Even if you had an order to bargain you couldn't get an order to make the employers agree to anything. It isn't an order to bargain you fellow want, it is a contract, a relationship, isn't it?

Mr. Keys: The ultimatum is, yes, but an order to bargain would be very welcome at this time.

Chairman Davis: Well, we can't make an order to bargain, but if we could it wouldn't do you any good.

My point is that the course of conduct that you are now following leads straight to disaster. If you want to accomplish your object it can't be accomplished by force now. It might be in peace-time; it can't be done now.

As I say, the only way you will get anywhere is to issue this order to get the men back to work.

Now look, your Union is a union of high-class people; I mean, high leveled people. They are in this unfortunate position with relation to whether they are employees, and so forth, and therefore without recognition, battling for recognition.

The first thing for you fellows to do is to subscribe, without reservation, to the no-strike pledge. It is the only chance you have got.

Mr. Keys: Mr. Chairman, how can we subscribe to the

no-strike pledge when it is the only alternative we have to the present date to handle the situations that have existed?

Chairman Davis: It isn't the only alternative, Mr. Keys.

Mr. Keys: It has been until the past week, we might say.

Chairman Davis: Well, that may be. Now you are going back to the delays, and I think you ought to be fair with me about that.

Mr. Keys: I am trying to be, Mr. Chairman.

Chairman Davis: I know you are.

Mr. Garrison: May I state the chronology on that, Mr. Chairman?

Chairman Davis: Yes.

What I mean is this. I don't want to go into that whole story, but I have talked with you frankly all the time and you know what we have been trying to do and how we have been trying to handle the thing. That is water over the dam.

Mr. Garrison: Mr. Chairman, may I say this?

When we wired you on March 29, I think it was, Mr. Keys, that the cases were up for discussion, it was almost immediately after that that we learned that the cases that you had pending before the National Labor Relations Board were likely to be decided very shortly, and in those cases, as you know, the question of whether or not you were to be regarded as employees under the Wagner Act, which in turn is controlling in the War Labor Disputes Act, was one of the main issues to be decided.

A doubt had been cast on it by the Maryland Drydock decision, and we unanimously concluded that in that state of affairs the wise thing to do was to await the National Labor Relations Board decision, which would finally determine once and for all whether you were employees within the meaning of those two statutes, without which we could not definitely take jurisdiction.

Now, soon after that, your groups came down here to Washington, as you described, and were here for some three weeks, I think. During their stay I conferred with them on several occasions. We went over the whole state of affairs, and I think they were quite agreed themselves

that the intelligent thing to do was to await the decision of the National Labor Relations Board.

Now, that decision did not come out quite as soon as expected; it came out on May 8, and within 24 hours after the Board held without equivocation that you were employees within the meaning of those two laws, we wired you that we had taken jurisdiction of the cases.

By that time, unfortunately, you were on strike and, in accordance with the uniform practice of this Board, we could go no further until you returned to work.

Mr. Keys: Mr. Garrison, if we are employees aren't we entitled to all of the privileges and benefits of any law of this country that was enacted for the benefit of employees?

Mr. Garrison: You know quite well that the National Labor Relations Board is the one that determines your rights under the Wagner Act. We have nothing to do with that at all. We are the Board that determines your rights under the War Labor Disputes Act, and under that Act we are prepared to go ahead. We can't go ahead, however, until your people are back at work.

Now it is just as simple as that.

Mr. Brophy: Mr. Keys, I think the conduct of this Board in the past, in cases having similar points of dispute as you people raise, is the answer to your question: What will the Board do? If you go back, you can take refuge in the past practices of the Board for your answer; there is the answer. It is implicit in our past performance.

Chairman Davis: Mr. Keys, the situation was and is today as Dean Garrison has explained, and it is stated on the record now what happened to cause the delay.

You will recall that I said to you in my judgment we should not make our decision about jurisdiction until the NLRB had decided whether the foremen were employees or not, at least, for obvious reasons. As soon as that decision was made we took jurisdiction. We were all ready and we are ready now to vote on a procedure for tackling this dispute where it lives and get right down to call in the two sides and see what is the proper solution of it. We are all ready to do that, and we find you fellows out on the streets; now we can't go ahead with people on the streets.

My own feeling, gentlemen, is that everything has been

said between us that can be said. I think that the Board is entitled to hear from you this morning, to have the decision whether you will go along with us or not.

Now I don't want you to give it now. In the first place, I want to hear from General Arnold when he comes in. Also, Admiral Pace is here from the Navy and he may want to say something afterwards.

However, when they are through I want to adjourn and I want you to call your people together, Mr. Keys, and report to me within an hour or so—whatever time you want to take—what your decision is.

You can report to me in my office.

Mr. Keys: Mr. Davis, I am quite sure that we as a group are willing to give you that answer this morning, but this, gentlemen—

(General Arnold entered the meeting.)

Chairman Davis: I have already announced, General, to the meeting that we asked the Secretary to tell us what the effect of this strike was on the war effort and that he has indicated that he asked you to come over and do it for us. Will you go right ahead; the floor is yours.

General Arnold: We of the military services have no interest in the relative merits of the dispute. That is not our business. But it is inconceivable from our point of view how we can have strikes which stop war production, production on war materials so essential that they may possibly even determine the extent of our bombing operations into Germany, so essential it is possible that they may even affect our invasion operations.

These present strikes in Detroit cover Packard where we are producing the Merlin engines; they are affecting Briggs where A-20, B-29, B-17, and B-24 parts are being produced; they are affecting Murray where we are producing P-47 wings and B-17 parts; they are affecting Hudson where we are producing B-29 parts and P-38 parts; they are affecting Gar Wood where we are producing cranes for heavy trucks, parts for our amphibious ducks, winches and parts for wrecking trucks used in the battlefield and other places.

We have been working for a long time to get our maxi-

mum effectiveness and efficiency in bombing Germany. Due to the character of our position we had to change our technique and change the method of employment of all types of aircraft. We had to develop long-range fighting aircraft to accompany our bombers. We found that our losses were determined by the amount of fighters that went with the bombers. The fighters determined the success or failure in many cases of the bombing missions. They determined how far we can go into Germany and in some cases whether or not it is possible to reach our objective. These fighters also determine the life or death of the crews of those bombers

These strikes that are in effect now make it impossible for me to meet my obligations with the airforces I have in the four corners of the world. They definitely tell me that I cannot furnish fighters where they are needed at the time they are needed.

I then must change my plan. I have to do it in advance. Must I then cut down on the strength of the bombers that I send into Germany? Must I then change my timetable for destruction of critical industries in Germany based upon these strikes? Must I tell my bomber commanders, my airforce commanders that it will be impossible for me after a certain date to furnish them the fighter protection that they must have with their bombers?

In my opinion this is one of the most serious setbacks that the Army Airforce program has had since its inception. And to show you that I am not exaggerating, this strike so far has cost the United States Army Airforce 250 P-51 airplanes, which is not a small number.

It is most serious at this particular time because we are putting an all-out effort against the German airforce, and if it continues it is going to enable the German airforce to have a respite which will enable them to recover when they are just reeling under our blows.

I also have another obligation. I have a responsibility to these crews, responsibility to the families of these crews. What can I say to the crew members of the planes that are shot down, those that may be taken prisoner, those that may be wounded? How can I explain to the relatives of those that are killed the lack of fighter aircraft that I didn't

have or may not have to send in with these bombers? How can I explain that? How can I explain this lack of protection, the planes which might have been there to save their lives?

That is all I have to say.

Chairman Davis: Thank you very much.

Mr. Nelson: Can we ask the General some questions?

General Arnold: I am a busy man. I know nothing about the relative merits of the dispute and I am not going to become involved in it.

Mr. Nelson: If you won't answer questions, I would like for it to appear on the record.

(General Arnold leaves the meeting.)

Chairman Davis: Is Admiral Pace here?

(Admiral Pace indicates his presence.)

Chairman Davis: Do you care to say anything? If you do will you come up here?

Admiral Pace, gentlemen.

Admiral Pace: I will try to be brief because I think General Arnold has covered the subject very completely. I would just like to add our word, that this production that is affected by this strike is equally vital to the Navy.

We have two of our most important airplanes that are absolutely dependent upon the production of the Briggs Company in Detroit. One of those is one of our best fighting airplanes, the spearhead of our attack in the Pacific. The other is an improved model of torpedo plane which we are trying to bring in to supplement the force of torpedo planes we already have.

We are just as concerned as the Army is about the effect that this strike will have on our ability to continue to supply our forces in the Pacific with the superior types of airplanes they need to carry out the campaigns that are planned for them.

Chairman Davis: Thank you very much, Admiral.

Mr. Nelson: Can we ask the Admiral a question?

Chairman Davis: No.

Mr. Nelson: I would like it to appear we are not permitted to ask these gentlemen any questions.

Chairman Davis: All right, it is on the record. The

armed forces were invited to come here for a single purpose—

Mr. Nelson: We understand the purpose, but we don't think we ought to be the victim of them without any opportunity of inquiry.

Chairman Davis: If you will let me finish my sentence in an orderly way, they were sent here for a sole purpose. That was to state the effect of this thing on the war effort. There is no implication one way or the other of blame for that. We are not assessing blame now. We are certainly not through the services. We wanted it to show on the record in order that you people might know and the employers might know and the country might know what the effect of this strike is on the lives of our fighting men and the defense of our country. It is on the record.

Mr. Nelson: Mr. Chairman, the protest I make is that the record is made as though these foremen hadn't any interest in that matter. I think that is unfair.

Chairman Davis: I don't think, Mr. Nelson, that is correct. I was careful to say that the services expressed no views about that. We know here on the Board the circumstances that so often surround strikes; we know that there are two sides to every dispute, and what we want to do is to get to this dispute. That is what the War Labor Board wants to do, to get down to brass tacks on the dispute itself.

It is just unutterably deplorable that these men who are fighting for what they certainly honestly believe to be a fundamental right should be impeded in that fight by shutting themselves off from the only path in which their rights can be asserted in time of war. I am sure that on mature consideration you gentlemen will come to the same conclusion.

Mr. Shipley: Mr. Chairman, I would like to make a statement. We think it might be said for the record that the labor members of the Board have repeatedly stated our no-strike pledge.

Today labor recognizes a strike by American employees dealing with an organized group of employees, and as members of labor we urge the foremen to return to work and believe it to be the responsibility of this agency of

Petitioner's Exhibit No. 41

Government to see that the recognized processes of collective bargaining are available to foremen in American industry in the same relation that other workers enjoy.

I think that might be said as labor's position from this side of the table repeatedly. I realize the implications of pressure. I think these men have the same rights in American industry that any other group of employees have, and it is the responsibility first of them to make a decision, and second, of this Board to afford them that opportunity.

Chairman Davis: I may add just this, that we have, as you know, never received from the Aeronautical Products Company any assurance such as we did receive from the other companies and we sent them a telegram in which we directed them to be present.

I think I'd better read the telegram (examining documents). I haven't got it here, but we said that if their reply to our former telegram was to be taken as a refusal—

(A document was handed to Mr. Davis)

Mr. Davis: To clear the record, we telegraphed them as follows:

"The National War Labor Board understands that all other companies are prepared to take back striking foremen in accordance with the Board's request of May 13 without discrimination because of their participation in the strike.

"If your telegram of May 13 is to be construed as a refusal to comply with the Board's request, the Board acting pursuant to its power and duties under the War Labor Disputes Act and the Executive Orders of the President unanimously directs that you appear at a hearing on Wednesday, May 17, 1944, at 10:00 a. m., in Room 5341, Department of Labor Building, Washington, D. C., to show cause why you should not take back all striking foremen desiring to return to work without discrimination because of their participation in the strike. Please reply immediately."

We have a reply in which the Company assures us that it does not refuse to take back any foreman because he struck. They say they have a problem there of reduced

production so that there are not as many jobs as there were. I think they have lost some contracts. But they give us this assurance, that the men will not be discriminated against because they struck.

Now, Mr. Keys, I'd like to have an answer not later than twelve o'clock, if that is all right—unless you want to give it now. I'll be in my room—

Mr. Shipley: Are these men going to be given the opportunity of work within the plant if there isn't the opening as foreman?

Mr. Davis: You mean in Aeronautical Products? Well, I think that is something to be worked out in detail. You see, what the Board has done, Mr. Keys, is follow an old practice that we set up way back in the Mediation Board days when we first got into war strikes and started the idea of asking men to go back to work before their disputes were settled. That was somewhat of a novel idea at the time, but in the early cases we always accompanied that by a request to the companies to take them all back without discrimination.

That became the established practice of the Board. It was done in cases like Allis Chalmers, Vanadium Corp., and all our early cases. So that it came to be understood almost, and the question dropped out of the picture. It was never raised. So that our later telegrams have directed people to go back to work and then said nothing about their being taken back because we have assumed that that would always be done.

So we indicated to the companies in this case that they would be expected to take back without discrimination because of the strike and as you know, the Aeronautical Products did not give us that assurance. Now they give us that assurance, pointing out to us that they have a problem of reduced production.

Now I say to you that on any question of that sort that arises after the return to work, you can immediately appeal to this Board, which has jurisdiction and straighten it out on a fair basis. I think that answers your question, Carl.

Mr. Shipley: That is the assurance I think they've got a right to expect.

Mr. Davis: Yes.

Now I don't know, Mr. Keys—What do you have to say?

Mr. Keys: Well, I would only like to say this, Mr. Chairman, that the Foreman's Association of America definitely feels a tremendous responsibility in this situation. I only hope the employer feels a responsibility equally as great.

Unfortunately their newspaper advertisements and their quotations over the air and through the press do not indicate to the foremen as individuals that the employer does feel this responsibility. We don't want a strike. We didn't want a strike. We hope we never have another strike. But until this question of bargaining rights is finally resolved either between the foremen employees and the employer or through a reversal of the Maryland Drydock decision, or adequate legislation, whatever is necessary, we of course cannot put ourselves in a position of giving any promises governing our membership.

We know that when the men in the shop are pushed just so far, regardless of their status as citizens and their patriotism, they rebel. That is a condition we have on our hands today.

We have listened very carefully and we will adjourn—I mean, when you adjourn this meeting, rather; we will go into a session and give you an answer as quickly as possible.

Mr. Davis: All right. I'll be in my room. I just want to add this one word, Mr. Keys. In what you just said there is a certain implication of revolt of the union membership under the pressure of this feeling. Well now, we hear that often. Our experience has been that the responsible officers of these organizations can control their membership. At any rate, what we ask and what we think is the obligation of the officers is to go along and make the demand on their membership in any case.

I'll be very glad to see you. I'm trying to get away at noon, if I can, so if you will try to come in my room by twelve o'clock—If you can't do that, let me know and we'll arrange a later hour.

Thank you very much.

(Whereupon the hearing was adjourned at 11:10 a. m.)

PETITIONER'S EXHIBIT NO. 43.

Working Agreement.

The Packard Motor Car Company (hereinafter referred to as the company) agrees to recognize the Foreman's Association of America, Chapter 5 (hereinafter referred to as the chapter) as the exclusive representative of all supervision in charge of labor up to and including the rank of General Foreman and Special assignment men, for the purpose of bargaining in respect to rates of salary, wages, hours and general conditions of employment.

That there shall be one member elected in each division to take care of all grievances in that division with the division manager.

There shall be a three-man grievance committee set up to deal with the company representatives on all grievances, and conditions of employment within the plant that cannot be agreed upon by the division manager and the division representative, such cases shall be referred to the grievance committee and Management, who will permit both parties to be present while said case is being discussed for the purpose of settling the dispute satisfactorily.

Any grievance put before management, shall be given a hearing within 24 hours, and until a decision has been made in any case the status of the employee shall remain unchanged.

Should it be the case that the grievance committee and company shall fail to come to an agreement on any case, the chapter shall, upon reasonable notice to the company, be allowed to call a representative from the parent association.

Demands!

1. Rate of pay for all overtime shall be paid to all supervision on the same basis as all hourly rated employees. Provided that they are instructed by their supervisors to work.

Petitioner's Exhibit No. 13

2. A ten per cent bonus on wages shall be paid for all shifts other than the day shift.

3. The 5% wage increase paid from January 1st to be made retroactive to June 1st, 1942, the same as was granted to all hourly rated employees.

4. Rate of pay for all supervision to be 25% above the highest rated man under his supervision.

5. Classifications to be set that are uniform on all shifts. These classifications to be agreed upon by the chapter and the company.

6. Absence due to sickness or circumstances beyond control, pay shall be granted for twenty one days in any one calender year. Such leave shall not affect the annual vacation.

7. Two weeks vacation period shall be paid to any member of the chapter who has served a period of six months or more in any one year, one week vacation for less than 6 months.

8. Any vacancy on supervision shall be filled by a member of the Association from the Packard Chapter 5 if possible, and in all cases such appointments shall be agreed upon by the committee.

9. Demotions shall at all times be negotiated with the grievance committee and any man demoted for cause other than his own fault shall have the first consideration for promotion when a vacancy occurs.

PETITIONER'S EXHIBIT NO. 44.

FOREMAN'S ASSOCIATION OF AMERICA

Dearborn, Michigan

Phone CE 4900 — 5746 Schaefer Rd.

Packard Motor Co.
Chapter No. 5 — May 21, 1943

Mr. C. E. Weiss
Personnel Department
Packard Motor Car Company
Detroit, Michigan

Dear Sir:

As you are already aware, our association represents the majority of the Foremen and General Foremen working for the Packard Motor Car Company. I think you will readily agree that this was proven, on February 24th, when we had the election which was certified by the N. L. R. B. We were of the opinion that we could come to a mutual understanding with the company, and make some sort of an agreement under which we could discuss certain conditions of employment, and settle any grievances that might arise.

In order that this matter could be thoroughly considered by the company, I sent you a copy of a proposed contract which we expected to be a basis for discussion with our committee of three members. However, we could not agree with the position taken by the company in regard to the General Foremen and negotiations were broken off. During the time that has elapsed our members have been very patiently waiting with the hope that the company would realize that we have a right to collective bargaining, and that we belong to a bona fide organization that is sincere in its methods of doing business. We feel that the time has now arrived when we can again request a meeting between the management and our committee to discuss some sort of an agreement that will be accept-

able to our membership and the company. Therefore, I am instructed by the executive board to forward this letter requesting that negotiations be opened between the company and our committee with a view to our coming to an agreeable settlement. I am enclosing another copy of the proposed contract and also certain demands that we feel are not unreasonable.

I can assure you that any suggestion by the company in the way of making an agreement that will be fair and just to the company as well as the members of our association will be given the earnest consideration of our committee and the executive board. If, however, we cannot come to an agreement on this matter it is the purpose of the association to take necessary steps to obtain recognition and an adjustment of the grievances outlined by our committee.

It is the earnest wish of our executive board, that, we as an association, can work in complete harmony with the company, and by complete cooperation bring our war effort to a successful ending. We feel that this can be better accomplished when we are all in agreement, therefore, I am requesting, on behalf of the executive board that you make an appointment with the committee to sit down and come to an agreement within the next five days.

Yours respectfully,

ROBERT TURNBULL
Secretary, Chapter 5
Foreman's Association of America.

RT/rk

PETITIONER'S EXHIBIT NO. 45.

Foreman's Association of America
National Office
515 Barlum Tower
Detroit 26—Michigan
Phone Cadillac 2828

President
Robert H. Keys
Vice-President
William Vallance
Secretary-Treasurer
Elmer Reno
Membership Director
Harold M. Kelly

November 12th, 1943

Mr. George T. Christopher, President
Packard Motor Car Company
1580 East Grand Boulevard
Detroit, Michigan

Dear Sir:

The enclosed is a copy of the letter sent to the United States Conciliation Service requesting that the dispute that exists between the Packard Chapter No. 5 Foreman's Association of America and the Packard Motor Car Company be certified to the War Labor Board for settlement.

Very truly yours,

(sgd) ROBERT H. KEYS
President
Foreman's Association
of America

RHK/rk
Enc.

Petitioner's Exhibit No. 45

Foreman's Association of America
National Office
515 Barlum Tower
Detroit 26—Michigan
Phone Cadillac 2828

President
Robert H. Keys
Vice-President
Elmer Hyde
Secretary-Treasurer
William Fisher
Membership Director
Harold M. Kelly

November 5th, 1943

Commissioner Edward M. Miller
United States Conciliation Service
321 Federal Building
Detroit, Michigan

Dear Sir:

For your information the dispute that now exists between the Foreman's Association of America Packard Chapter No. 5 and the Packard Motor Car Company located at 1580 East Grand Boulevard, Detroit, Michigan, was created by the following issues.

1. Refusal of the Company to recognize the Foreman's Association of America as the collective bargaining agent for the supervisory employees of Packard Motor Car Company who are members of Packard Chapter No. 5 after they won an N. L. R. B. conducted consent election 486 to 2.

2. Refusal of the Company to meet with the duly elected representatives of the Foreman's Association of America and discuss the problems of the supervisory employees who are members of Packard Chapter No. 5.

3. The Company does not recognize seniority rights for its supervisory employees.

4. The Company does not have any definite sick leave provisions.

5. The Company does not make adjustments in compensation when a foreman temporarily fills the position of a higher paid foreman during illness, vacation, etc.

Petitioner's Exhibit No. 45

6. The Company does not pay its supervisory employees for overtime work performed on an equal basis with the employees under their supervision; thus creating inequalities.

7. Wages and salaries of supervisory employees are not commensurate with their responsibilities.

8. The Company does not properly classify its supervisory employees.

9. The Company does not pay a bonus to its supervisory employees for night shift work.

10. The Company does not properly designate number of employees to be supervised by each foreman, thereby causing them mental and physical fatigue.

11. The Company does not provide vacation plans so that each supervisor will know what he will receive in pay for his vacation period.

A vast majority of the supervisory employees of Packard Motor Car Company are members of Packard Chapter No. 5 of the Foreman's Association of America. Their conditions of employment must be improved.

Will you please certify this case to the National War Labor Board for settlement of the issues in dispute as herein above set forth.

Very truly yours,

ROBERT H. KEYS
President
Foreman's Association
of America

RHK/rk

cc: Dr. John R. Steelman, Director
U. S. Conciliation—Washington, D. C.

cc: Mr. George T. Christopher, President
Packard—Detroit, Michigan

cc: Mr. Ronald Haughton, Disputes Director
Regional W. L. B.—Detroit, Michigan

COMPANY'S EXHIBIT NO. 3.

Form S-25-A

Original Copy to be Retained

Date 10-3-44

To Mr. C. E. Williams RM Dept. Subject
From P. Traen SDE Dept. Clearance

Copy to
HC Winfield S
JE Locher RL
Foreman SDE
C. Steward SDE

SDE-1547 Darrel B. Shelton is a habitual absentee. He was called into my office last week and warned regarding his attendance, at which time he was told that he would be given a 24 hour notice, if he was absent in the future.

On 10-2-44, he reported for work at 2:00 AM., in a very intoxicated condition and therefore was sent home. The employee reported for work today and left his post without asking permission.

As we cannot maintain efficiency with this type of employee, we are therefore waiving the customary 24 hour notice and clearing him from the SDE Roll.

Work to Win:

P. TRAEN—j
WM. BANKOWSKI.

Stamped: Delivered Oct 4, 1944.
J. E. Locher (Balance illegible.)

COMPANY'S EXHIBIT NO. 4.

Form S-22

Original Copy to be Retained

Date 11-21-44

To SDE-1504
Winifred R. Archer Dept. Subject
From P. Traen SDE Dept. Penalty

Copy to	
HC Winfield	S
E Kussrow	RL
Foreman	SDE
Chf. Stew.	SDE

You were found gambling by the Plant Guards on 11-17-44, at 11:20 PM on the 1st floor of building 19 Court, where cards and .56¢ were confiscated by the Guards.

This being your first offense, you are therefore being penalized with three days off for this offense.

Dec. 4th, 5th and 6th.

Work to Win:

P. TRAEN—j

Written in ink across face: 3 Days off First Offense Kussrow.

COMPANY'S EXHIBIT NO. 5.

Form S-22

Original Copy to be Retained

Date 11-27-44

To	SDE-2543 Wm. Bankowski	Dept	Subject
From	P. Traen	SDE Dept.	Penalty

Copy to

HC Winfield S
E Kussrow RL
Foreman SDE
Chf. Steward SDE

According to evidence, you had whiskey in your possession and were drinking with other employees in SDE Department on Nov. 17, 1944.

As this is in violation of Company regulations, we are hereby notifying you that you are to be sent home for one week.

Nov. 28-29. Dec. 4-5-6th

Work to Win:

P. TRAEN—j
WM. BANKOWSKI.

Company's Exhibit No. 6

COMPANY'S EXHIBIT NO. 6.

Form S-25A

Copy

Date 6-28-44

To Mr. C. E. Williams RM Dept. Subject
From P. Traen SDE Dept. 24 hour notice

Copy to
HC Winfield S
JE Locher RL
Foreman SDE
Chf. Steward SDE

SDE-1584 Joe S. Whitehead does not meet production requirements and his actions prove that he does not intend to. He has been told to stay on the job by the Foreman when he was found away from his work sitting on a Stock Truck.

This employee has not attempted to meet production requirements for several days. Therefore, this is a 24 hour notice that he is to be removed from the SDE Roll.

Work to Win:

P. TRAEN—j
WM. BANKOWSKI,
Chf. Steward.
H. WATTS.

Written in ink across face: Gil.
Stamped: (Illegible.)

COMPANY'S EXHIBIT NO. 7.

S-23

Copy

Date 2-21-44

To Mr. J. E. Locher RL Dept. Subject
From P. Traen Dept. Gambling

To
Div. Mgr.
Chief Steward

Name: Eriskin Fender Roll No. SDE 1789.

This employee was caught gambling in Location Bldg 17—1st Floor on Feb. 19-44, 6:15 PM by J. Jones, Guard.

Dice)
Cards) Confiscated by J. Jones
) & W. Ogilvie
Money)

He is being given 3 days off for this offense, effective 2-22-23 & 24.

Work to Win!

.....
Foreman.

P. TRAEN,
Gen'l Foreman.

WM. BANKOWSKI,
Chief Steward.

COMPANY'S EXHIBIT NO. 8.

Form S-22

Duplicate Copy to be Returned

Date March 6, 1944

From Mr. C. E. Williams, RM Dept. Subject
To P. Traen SDE Dept. Penalty—
SDE-1742 and
SDE-1728.

Copy to
HC Winfield S
JE Locher RL
Foreman SDE
Chf. Stwd. SDE

SDE-1742—D. S. Sauceman.
SDE-1728—O. E. Singley.

On March 4, 1944, the above employees reported to work from lunch intoxicated. The guards were called to remove them. O. E. Singley was found lying behind a plating tank, passed out and had to be helped out to the gate.

For this Plant, violation I recommend that they be given a week off.

Written in ink across face: These men were given two days off apiece.

SDE-1742—Saucemans time starts March 16-17

SDE-1728—Singleys time starts March 14-15.

F. LAKE,
C. N. YOUNGBLOOD.

Work to Win!

P. TRAEN—et

COMPANY'S EXHIBIT NO. 9.

Form S-22

Original Copy to be Retained

Date 11-27-44.

To SDE-1508
Henryk Pulwicz — Dept. — Subject
From P. Traen — SDE Dept. — Penalty

Copy to
HC Winfield S
E Kussrow RL
Foreman SDE
Chf. Steward SDE

According to evidence, you had whiskey in your possession and were drinking with other employees in SDE Department on Nov. 17, 1944.

As this is in violation of Company regulations, we are hereby notifying you that you are to be sent home for one week.

Nov. 28-29. Dec. 4th 5th 6th.

Work to Win:

P. TRAEN—j
WM. BANKOWSKI.

COMPANY'S EXHIBIT NO. 10.

Requested Change in Classification.

Date 12-6-44.

Name Waclaw Gonsowski Roll No. SDE 2706.

Productive Labor

Present Classification CF-102 Part No. ..... Operation Polisher.

New Classification CF-105 Part No. ..... Operation Plater.

Proposed Rate 1.20.
Checked by Time Study G. Wilson.
Signed

Non-Productive Labor

Present Classification.....New Classification.....

Proposed Rate.....

New Duties: .....

Signed P. Traen Approved (Name illegible)
Foreman Division Manager

O. K. 12-7-44

Remarks: Will be Increased to

WACLAW GONSOWSKI.

Return in Duplicate

COMPANY'S EXHIBIT No. 11
(Front)

1471

9-21 C.E. 11/12

ORIGINAL

HELP REQUISITION

No 124523

Date 9-20-44

Please employ for SDE-1 Dept. | Approximate Rate

NUMBER	OCCUPATION AND QUALIFICATIONS	CLASSIFICATION
Two	Platers	CF 105.

Additional		Permanent		1st Shift		3rd Shift	X	Hourly		White		Male	
Replacement		Temporary		2nd Shift		Office Hours		Salary		Colored		Female	

If Temporary, How Long | Why Necessary: Replacements | To Start: 9-21-44

Signed: C Truex (Foreman) | Approved: (Dept.) | Approved: (Emp. Mgr.-Office Mgr.)

DATE FILLED	NUMBER	DATE FILLED	NUMBER
V. Paradowski	9/21		
A. Augustynik	9-1		

Rel-3 10M 11-43 2001300

COMPANY'S EXHIBIT No. 11
(Back)

9-20-44

Requisition #124523 for two Platers CF-105 to be transferred from SDY.

SDY-2767 V. Paradowski from SY-131 to CF-105
" 2679 A. Augustynik " SY-131 " CF-105

P. Truex.
SDE Dept.

TRANSFERRED LABOR

Dept. 11E. 2 Aver. Rate 12/21/44

Group _____ Date 12-8-44 1044

HOURS	AMOUNT	FROM	HOURS	AMOUNT	TO
		11E2	30		11E1

P. Braen

FOREMAN

DEPT. COPY

EMPLOYEES DESTINATION PASS

No. 715891

NAME Co. Ex 13 1/21/44

DATE 12-7-43

ROLL NO. WE-12

OUT OF PLANT

SICKNESS OR ACCIDENT	
RESIGNED	
DISCHARGED	
PERSONAL BUSINESS	
PERSONAL PROPERTY	
COMPANY BUSINESS	
COMPANY PROPERTY	

TO BE FILLED IN BY FOREMAN

HOURS WORKED THIS DATE	NO TIME ALLOWED	TIME OF LEAVING DEPT.
10 1/2		5.55 PM

DEPT. HEAD. SIGNED

GUARD SIGNED

TIME OUT OF PLANT A.M. P.M.

INTER-DIVISIONAL

DIVISION FROM	OUT	A P
	IN	A P
DIVISION TO	OUT	A P
	IN	A P

TIME EXCEPTION REPORT

Co Ex 14
12/24/47
1464

Employees of 9 D E - 2 Dept:

Worked 5 Hours on this Date 9-30-47

CHECK SHIFT

with the exception of those listed below. 1.☐ 2☐ 3☐

This Side to be Used for Employees Working Less Than Hours Stated Above. Actual Hours Must be Listed.			This Side to be Used for Employees Working More Than Hours Stated Above. Actual Hours Must be Listed.		
Roll No.	Hours worked	REASON	Roll No.	Hours worked	REASON
2508	0	AWOL	2722	0	AWOL
2506	0	"	2734	0	AWL
2538	0	"			
2566	0	"			
2575	0	"			
2637	0	"			
2613	4 1/4	LATE			
2644	0	AWOL			
2618	0	"			
2650	0	"			
2659	0	"			
2667	0	"			
2668	0	"			
2671	0	"			
2108	0	"			
2714	0	"			
2718	0	"			

Signed I Isaacs Approved
Foreman Division Manager

Division Manager's Approval will be Required on all Hours Worked Over Regular Shifts Approved by the Management.

RZ-530A PRINTED IN U. S. A.

REQUESTED CHANGE IN CLASSIFICATION

6.16

NAME P. SULLIVAN ROLL No. YF-1421 DATE 4-10-44

PRODUCTIVE LABOR

PRESENT CLASSIFICATION Y-547 PART No. - OPERATION MOTOR ASSBLY

NEW CLASSIFICATION Y-104 PART No. - OPERATION " BUILDER

PROPOSED RATE $1.36 - 27 cents CHECKED BY TIME STUDY [signature] SIGNED

NON-PRODUCTIVE LABOR

PRESENT CLASSIFICATION NEW CLASSIFICATION PROPOSED RATE

NEW DUTIES:

SIGNED J. R. Wilkins FOREMAN APPROVED [signature] DIVISION MANAGER

REMARKS: WILL BE INCREASED TO

J23

RETURN IN DUPLICATE

RM 60 [illegible]

COMPANY'S EXHIBIT No. 16

1475

ORDER REQUEST

ORDER FROM Co Ex 17 — DATE 4-3-44 — ORDER AND TOOL NO. STAMP AS FOLLOWS: YT-802043

ADDRESS — CHARGE JY-302YA — DEPT. YP-3

TERMS — F. O. B. C.O.D.

MAKE ✓ ALTER ADAPT — QUANTITY 3 — DESCRIPTION "T" HANDLE WRENCHES — PRICE

MAKE TO DWG. NO. B- — DATE WANTED 4-44

PART NO. A60778 — PART NAME CRANKCASE UPPER HALF Bearing + studs — MACH. NAME Ass'y.

MODELS 4M-2500 — MACH. NO. — PCS. REQ'D PER UNIT — NO. REQ'D PER SETUP

REFERENCE TOOL OR LAYOUT NO. — USE WITH TOOL NO. — CHARGE — ORDER FOR

DESCRIPTION OPERATION Assemble air drain connection PO 37199 — ORIGINAL

Ripple upper face of crankcase — GROUP — FLOAT

OPER. NO. 50 — SEE PART NO. — OLD PART NO. — STORES — TOTAL

DRAWING MAKE ALTER NO. DWG.

ORIGINAL EQUIP. ☐ IMPROVED TOOLS ☐ INCREASED PRODUCTION ☐

REPLACEMENT ✓ SAVINGS ☐ ALTERATION NO.

SUPERSEDES TOOL NO. — DISPOSITION: USE ☐ ALTER ☐ SCRAP ☐

PER SET — FLOAT — STORES — ON ORDER — PRICE — TOTAL

APPROVALS

J R Wilkin

RZ-511-A PRINTED IN U.S.A.

ORIGINAL

HELP REQUISITION

No 137573

Date 11-27-44

Please employ for YF. Dept. | Approximate Rate .92 C/H

NUMBER	OCCUPATION AND QUALIFICATIONS	CLASSIFICATION
2	JANITOR'S	Y-224

Additional		Permanent		1st Shift		3rd Shift		Hourly		White		Male	
Replacement	✓	Temporary		2nd Shift	✓	Office Hours		Salary		Colored	✓	Female	

If Temporary, How Long | Why Necessary: REPLACEMENT. | To Start: AT ONCE

Signed (Foreman) | Approved (Supt.) | Approved (Emp. Mgr., Office Mgr.)

DATE FILLED	NUMBER	DATE FILLED	NUMBER
REPLACING	YF-54	T. COMPTON	
"	YF-53	B. WASHINGTON	
	12/6		

WW-3 10M 8-43 5086340

COMPANY'S EXHIBIT No. 18

1477

DEPT. MF | DATE | | | | 11-27

NO. 54 | NEW RATE | | | | 6.19

DATE 10-20-44 | NAME Mr. | Thomas W. Compton | AGE 28 | SOC. SEC. 380-12-3600

RATE 92 | ADDRESS | 17893 Maine Det 12 | SENIORITY 10-20-44

CLASS 224 | OCCUPATION Janitor | CITIZENSHIP Amer. Col.

MALE FEMALE M | MARRIED SINGLE S | PACKARD AID | HOSPITALIZATION

SKILL	PRODUCER	DEPARTMENT	11-24- DATE 44
EXCELLENT	FAST	ORDERLY Yes	WOULD YOU RE-EMPLOY Yes
AVERAGE Yes	MEDIUM Yes	REGULAR Yes	ADVISABLE TO TRANSFER Yes
POOR	SLOW	11-24-44	LAST DAY WORKED NOV 23 1944

REASON FOR LEAVING Laid Off Reducing Force.

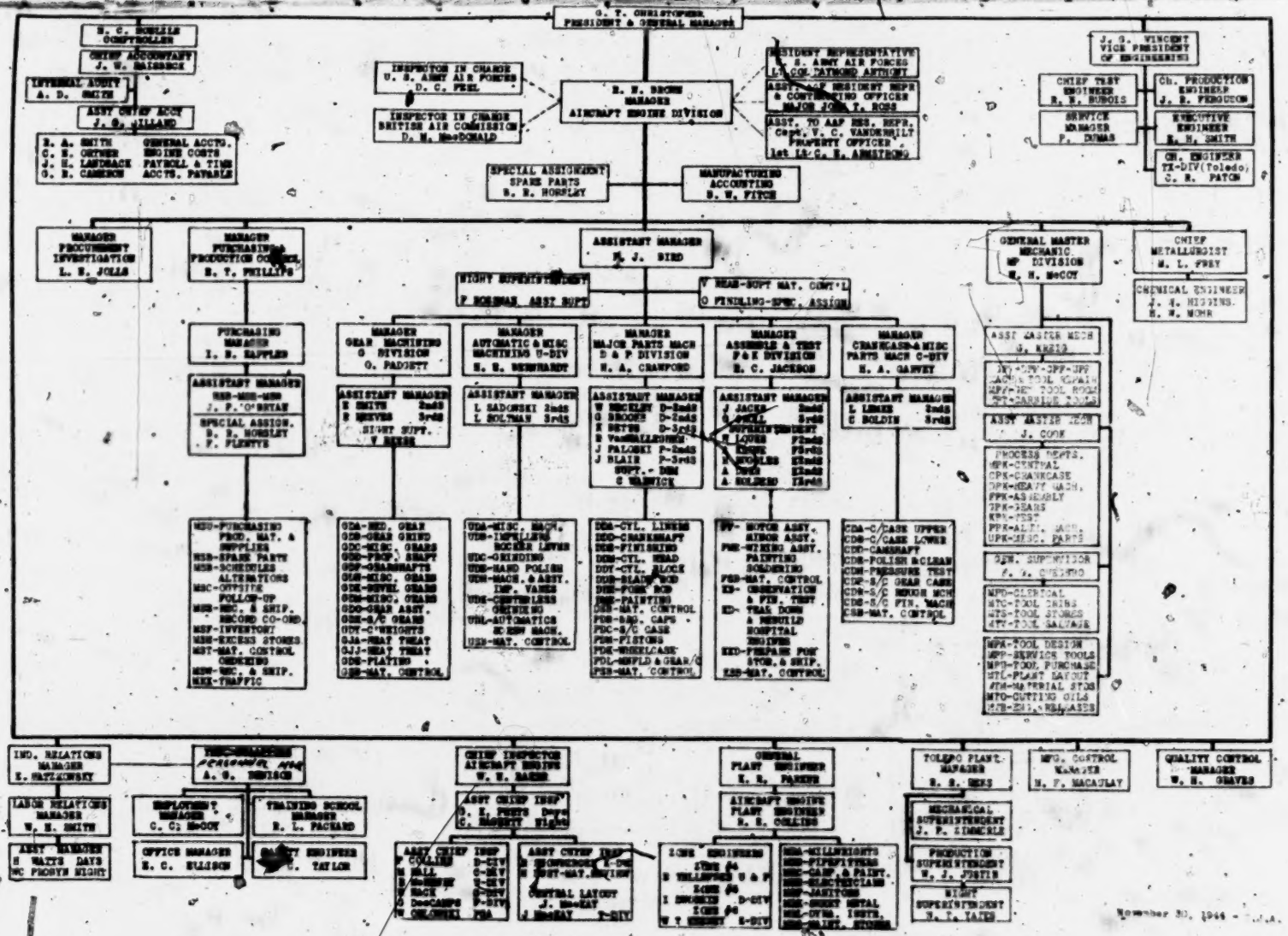
TOOL CHARGES Now | HOSPITAL ROLL Yes | SIGNED J. H. Watkins FOREMAN

EMPLOYMENT DEPT. REMARKS Reg Work

TRANSFER TO	NO.	DATE	CLASSIFICATION	SIGNED
				CLEARANCE CLERK

BB-8 1944 EMPLOYEE'S DEPARTMENTAL RECORD CARD

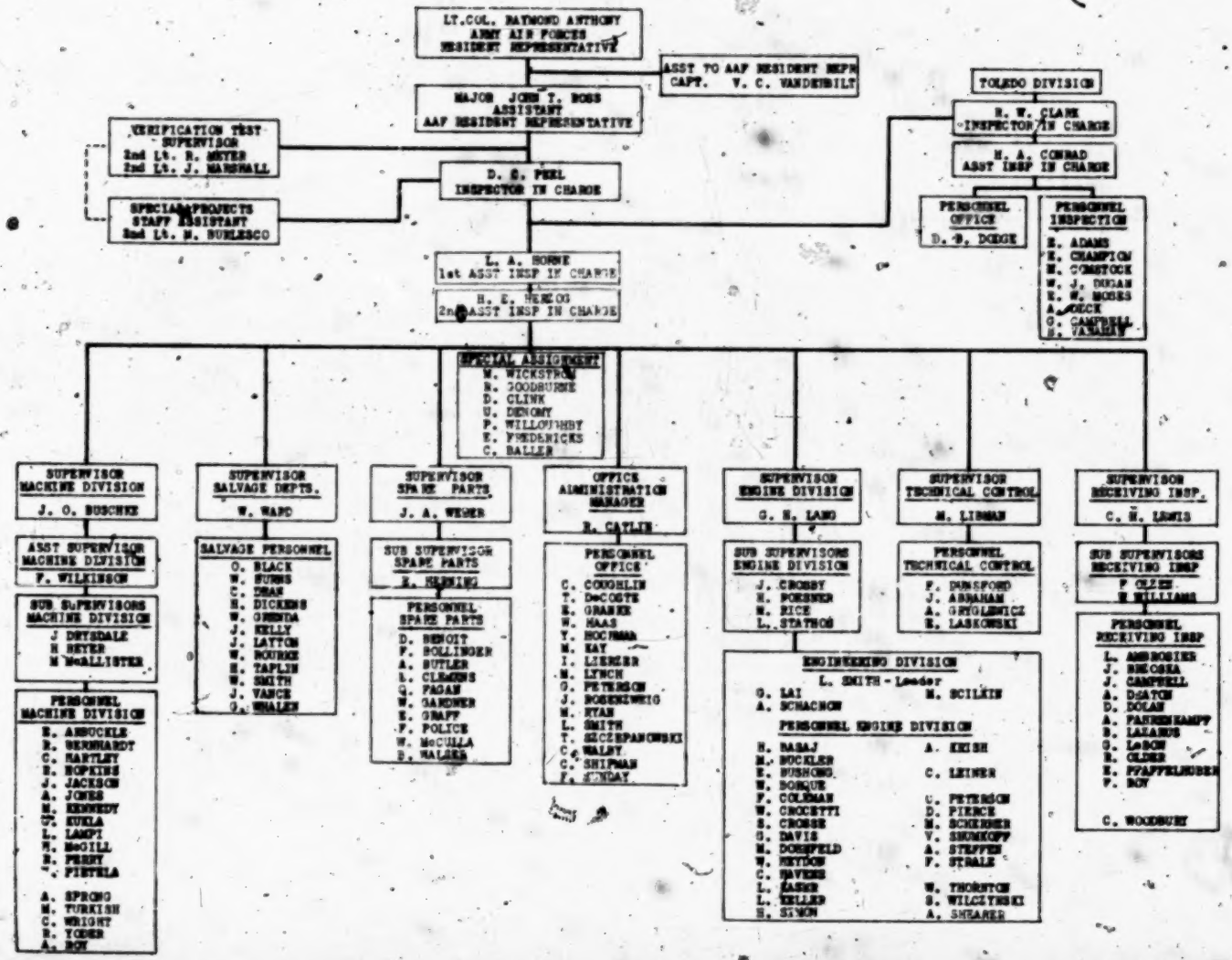
2nd. shift dr's

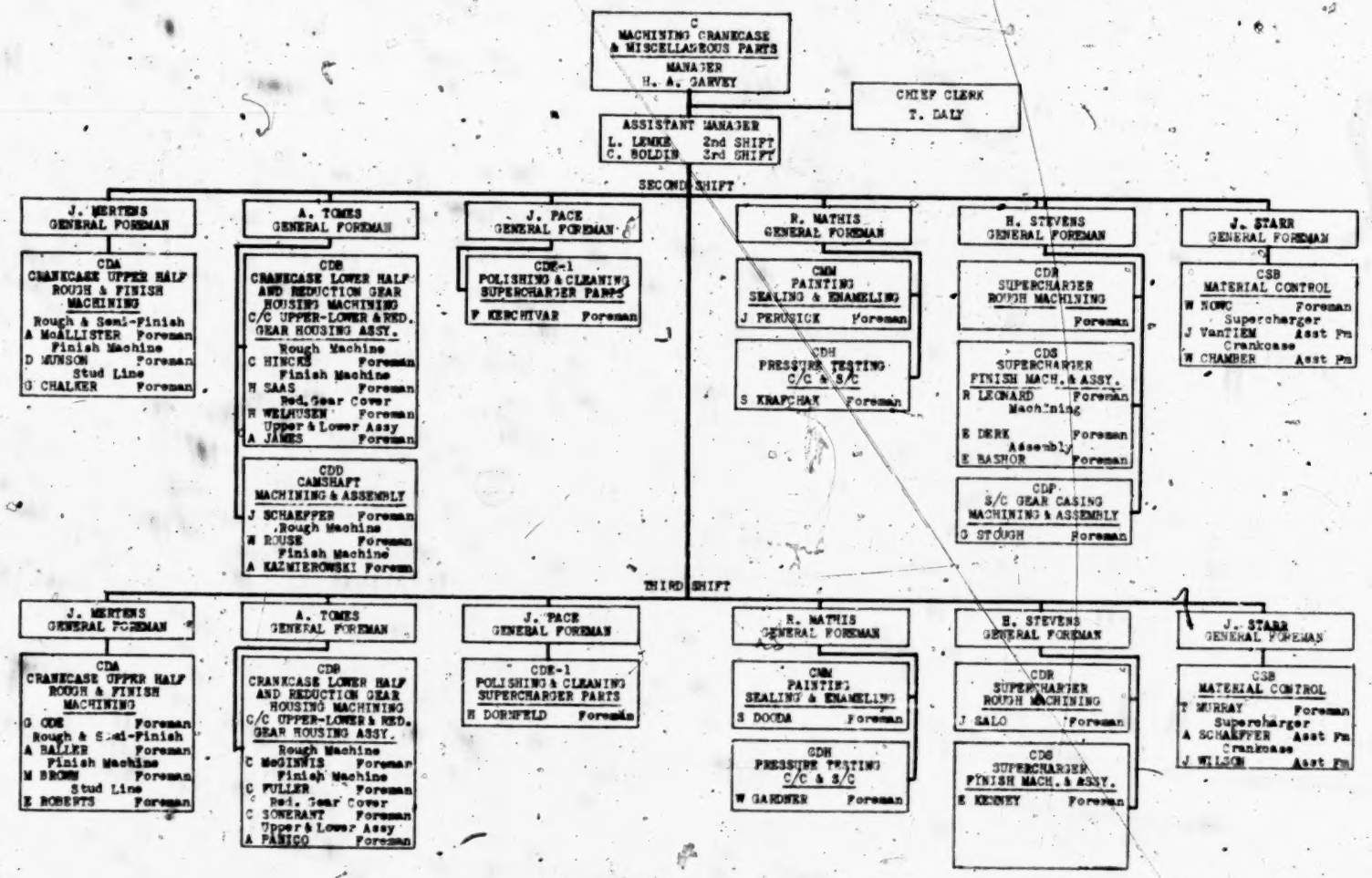


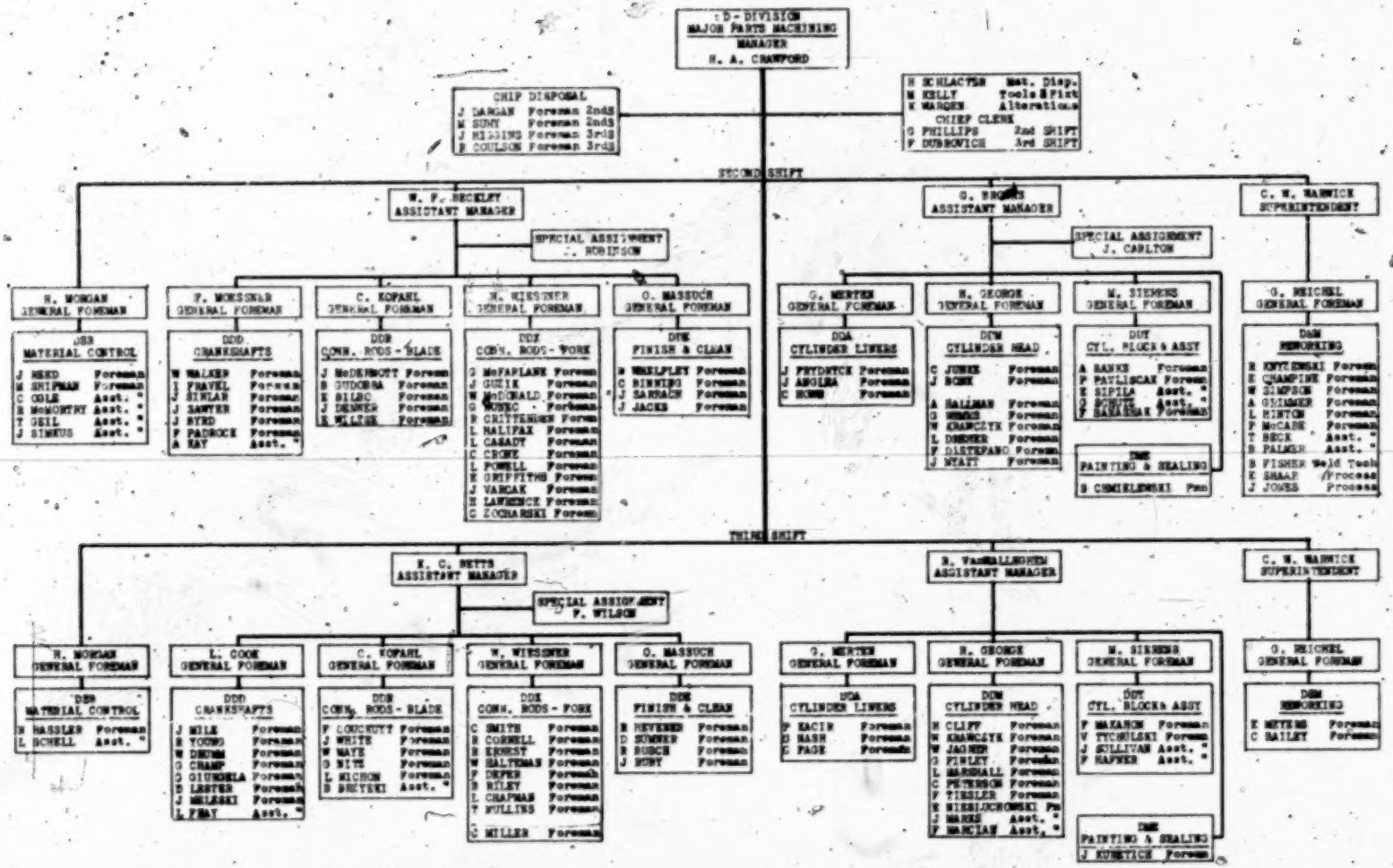
COMPANY'S EXHIBIT No. 22

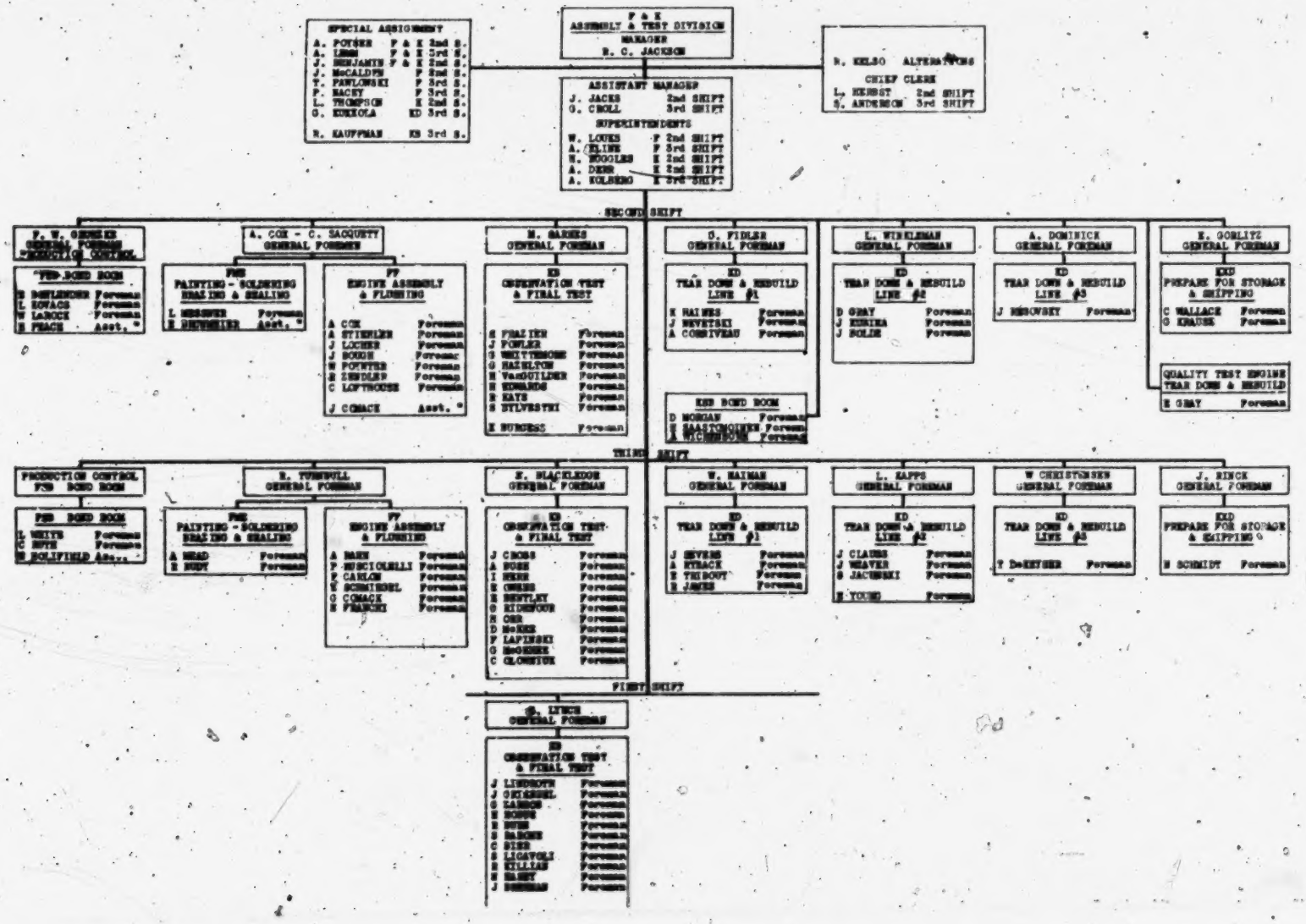
1479

November 30, 1944 - U.A.


LT.COL. RAYMOND ANTHONY
ARMY AIR FORCES
RESIDENT REPRESENTATIVE
ASST TO AAF RESIDENT REPR
CAPT. V. C. VANDERBILT
MAJOR JOHN T. ROSS
ASSISTANT
AAF RESIDENT REPRESENTATIVE
VERIFICATION TEST SUPERVISOR
2nd Lt. R. MEYER
2nd Lt. J. MARSHALL
SPECIAL PROJECTS STAFF ASSISTANT
2nd Lt. M. BURLESCO
D. S. PEEL
INSPECTOR IN CHARGE
TOLEDO DIVISION
R. W. CLARK
INSPECTOR IN CHARGE
H. A. CONRAD
ASST INSP IN CHARGE
PERSONNEL OFFICE
D. D. DODGE
PERSONNEL INSPECTION
E. ADAMS
E. CHAMPION
H. COMSTOCK
W. J. DUGAN
E. W. HOBBS
A. COCK
G. CAMPBELL
L. A. HORNE
1st ASST INSP IN CHARGE
H. E. HERZOG
2nd ASST INSP IN CHARGE
SPECIAL ASSIGNMENT
W. WICKSTROM
R. GOODBURNE
D. CLINK
U. DENOMY
P. WILLOUGHBY
E. FREDERICKS
C. BALLER
SUPERVISOR MACHINE DIVISION
J. O. BUSCHKE
ASST SUPERVISOR MACHINE DIVISION
F. WILKINSON
SUB SUPERVISORS MACHINE DIVISION
J DRYSDALE
H MEYER
M McALLISTER
PERSONNEL MACHINE DIVISION
E. ARBUCKLE
R. BERNHARDT
C. HARTLEY
E. HOPKINS
J. JACKSON
A. JONES
M. KENNEDY
O. KUKLA
L. LAMPI
W. McGILL
E. PERRY
P. PIETELA
A. SPRONG
M. TURKISH
C. WRIGHT
R. YODER
A. ROY
SUPERVISOR SALVAGE DEPTS.
W. WARD
SALVAGE PERSONNEL
O. BLACK
W. BURNS
C. DEAN
H. DICKENS
W. GRENDA
J. KELLY
J. LAYTON
W. BOURKE
E. TAPLIN
W. SMITH
J. VANCE
O. WHALEN
SUPERVISOR SPARE PARTS
J. A. WEBER
SUB SUPERVISOR SPARE PARTS
E. HERRING
PERSONNEL SPARE PARTS
D. BENOIT
F. BOLLINGER
A. BUTLER
L. CLEMENS
G. FAGAN
W. GARDNER
E. GRAFF
F. POLICE
W. McCULLA
B. WALKER
OFFICE ADMINISTRATION MANAGER
R. CAYLIN
PERSONNEL OFFICE
C. COUGHLIN
T. DeCOSTE
E. GRABER
W. HAAS
Y. HOCHMAN
M. KAY
I. LIEBNER
M. LYNCH
O. PETERSON
J. ROSENZWEIG
M. RYAN
L. SMITH
T. SICKERPANOWSKI
C. WALSH
C. SHIPMAN
F. SUNDAY
SUPERVISOR ENGINE DIVISION
G. H. LAND
SUB SUPERVISORS ENGINE DIVISION
J. CROSBY
M. FORSNER
M. RICE
L. STATHOS
SUPERVISOR TECHNICAL CONTROL
M. LISMAN
PERSONNEL TECHNICAL CONTROL
F. DUNSFORD
J. ABRAHAM
A. GRYGLEWICZ
E. LASKOWSKI
SUPERVISOR RECEIVING INSP.
C. W. LEWIS
SUB SUPERVISORS RECEIVING INSP
F OLSEN
R WILLIAMS
PERSONNEL RECEIVING INSP
L. AMBROSIUS
J. BRZOSKA
J. CAMPBELL
A. DEATON
D. DOLAN
A. FAHRENKAMPF
B. LAZARUS
G. LeBON
R. OLDER
E. PFAFFENHUBER
V. ROY
C. WOODBURY
ENGINEERING DIVISION
L. SMITH - Leader
G. LAI
M. SCILKIN
A. SCHACHON
PERSONNEL ENGINE DIVISION
H. BABAJ
A. KEISH
H. BOCKLER
E. BUSHONG
C. LEINER
W. BORQUE
F. COLEMAN
G. PETERSON
W. CROCETTI
D. PIERCE
S. CROSBY
M. SCHERMER
O. DAVIS
V. SHUMKOFF
M. DORFFELD
A. STEFFEN
W. HEYDON
F. STRALE
C. HAVENS
L. JASER
W. THORNTON
L. KELLER
S. WILCZYNSKI
H. SIMON
A. SHEARER

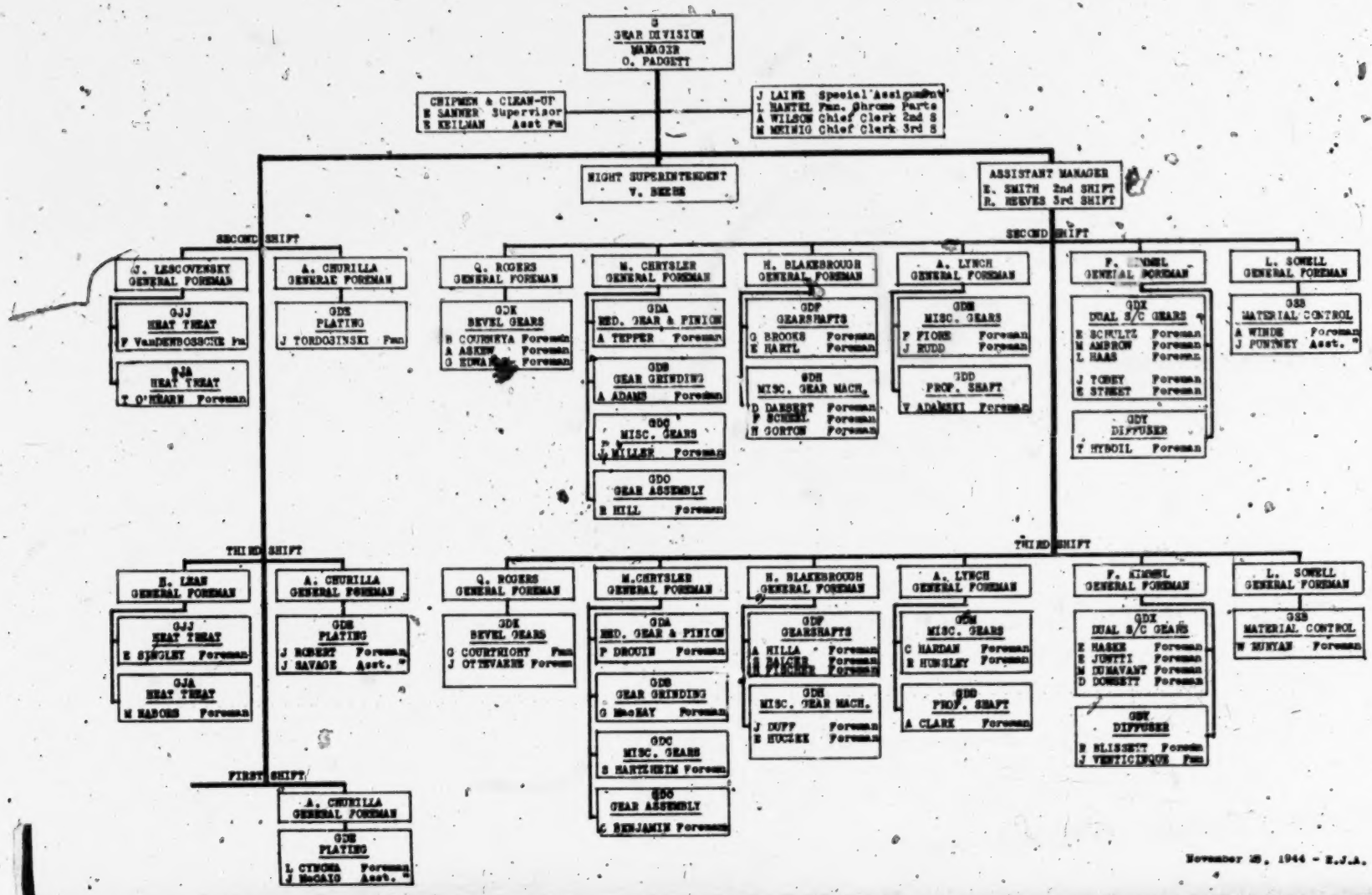

C
MACHINING CRANKCASE & MISCELLANEOUS PARTS
MANAGER
H. A. GARVEY
CHIEF CLERK
T. DALY
ASSISTANT MANAGER
L. LEMKE 2nd SHIFT
C. BOLDIN 3rd SHIFT
SECOND SHIFT
J. MERTENS GENERAL FOREMAN
CDA CRANKCASE UPPER HALF ROUGH & FINISH MACHINING
Rough & Semi-Finish
A McALLISTER Foreman
Finish Machine
D MUNSON Foreman
Stud Line
G CHALKER Foreman
A. TOMES GENERAL FOREMAN
CDB CRANKCASE LOWER HALF AND REDUCTION GEAR HOUSING MACHINING C/C UPPER-LOWER & RED. GEAR HOUSING ASSY.
Rough Machine
C HINCKS Foreman
Finish Machine
H SAAS Foreman
Red. Gear Cover
H WELHUSEN Foreman
Upper & Lower Assy
A JAMES Foreman
CDD CAMSHAFT MACHINING & ASSEMBLY
J SCHAEFFER Foreman
Rough Machine
W ROUSE Foreman
Finish Machine
A KAZMIEROWSKI Foreman
J. PACE GENERAL FOREMAN
CDE-1 POLISHING & CLEANING SUPERCHARGER PARTS
F KERCHIVAR Foreman
R. MATHIS GENERAL FOREMAN
CDM PAINTING SEALING & ENAMELING
J PERUSICK Foreman
CDH PRESSURE TESTING C/C & S/C
S KRAFCHAK Foreman
H. STEVENS GENERAL FOREMAN
CDR SUPERCHARGER ROUGH MACHINING
Foreman
CDS SUPERCHARGER FINISH MACH. & ASSY.
R LEONARD Foreman
Machining
E DERK Foreman
Assembly
E BASHOR Foreman
CDP S/C GEAR CASING MACHINING & ASSEMBLY
G STOUGH Foreman
J. STARR GENERAL FOREMAN
CSB MATERIAL CONTROL
W NOWC Foreman
Supercharger
J VanTIEM Asst Fm
Crankcase
W CHAMBER Asst Fm
THIRD SHIFT
J. MERTENS GENERAL FOREMAN
CDA CRANKCASE UPPER HALF ROUGH & FINISH MACHINING
G CDE Foreman
Rough & Semi-Finish
A HALLER Foreman
Finish Machine
M BROWN Foreman
Stud Line
E ROBERTS Foreman
A. TOMES GENERAL FOREMAN
CDB CRANKCASE LOWER HALF AND REDUCTION GEAR HOUSING MACHINING C/C UPPER-LOWER & RED. GEAR HOUSING ASSY.
Rough Machine
C McGINNIS Foreman
Finish Machine
C FULLER Foreman
Red. Gear Cover
C SONERANT Foreman
Upper & Lower Assy
A PANICO Foreman
J. PACE GENERAL FOREMAN
CDE-1 POLISHING & CLEANING SUPERCHARGER PARTS
H DORNFELD Foreman
R. MATHIS GENERAL FOREMAN
CDM PAINTING SEALING & ENAMELING
S DODDA Foreman
CDH PRESSURE TESTING C/C & S/C
W GARDNER Foreman
H. STEVENS GENERAL FOREMAN
CDR SUPERCHARGER ROUGH MACHINING
J SALO Foreman
CDS SUPERCHARGER FINISH MACH. & ASSY.
E KENNEY Foreman
J. STARR GENERAL FOREMAN
CSB MATERIAL CONTROL
T MURRAY Foreman
Supercharger
A SCHAEFFER Asst Fm
Crankcase
J WILSON Asst Fm


D - DIVISION
MAJOR PARTS MACHINING
MANAGER
H. A. CRAWFORD
CHIP DISPOSAL
J DARGAN Foreman 2nds
M SUNY Foreman 2nds
J HIGGINS Foreman 3rds
F COULSON Foreman 3rds
H SCHLACTER Mat. Disp.
M KELLY Tools & Fixt
K WARDEN Alterations
CHIEF CLERK
G PHILLIPS 2nd SHIFT
F DUBROVICH 3rd SHIFT
SECOND SHIFT
W. F. BECKLEY
ASSISTANT MANAGER
SPECIAL ASSIGNMENT
J. ROBINSON
G. BROWN
ASSISTANT MANAGER
SPECIAL ASSIGNMENT
J. CARLTON
C. W. WARWICK
SUPERINTENDENT
R. MORGAN
GENERAL FOREMAN
DBB
MATERIAL CONTROL
J MEKO Foreman
M SHIPMAN Foreman
C COLE Asst. "
R McMONTRY Asst. "
T GEIL Asst. "
J SIMMUS Asst. "
F. MORSCHER
GENERAL FOREMAN
DDD
CRANKSHAFTS
W WALKER Foreman
J FRAVEL Foreman
J SINLAR Foreman
J SAWYER Foreman
J BYRD Foreman
F PADROCK Foreman
A RAY Asst. "
C. KOPARL
GENERAL FOREMAN
DDB
CONN. RODS - BLADE
J McDERMOTT Foreman
B SUDOBBA Foreman
E BILBO Foreman
J DENNER Foreman
R WILLIS Foreman
W. WIESSNER
GENERAL FOREMAN
DDE
CONN. RODS - FORK
C McFARLANE Foreman
J GUZIK Foreman
W McDONALD Foreman
G MUNRO Foreman
R CRITTENDEN Foreman
L HALIFAX Foreman
L CASADY Foreman
C CROKE Foreman
L POWELL Foreman
E GRIFFITHS Foreman
J VARGAK Foreman
H LAWRENCE Foreman
C ZOCHARSKI Foreman
O. MASSUCH
GENERAL FOREMAN
DDE
FINISH & CLEAN
R WHELPLEY Foreman
C BINNING Foreman
J SARRACH Foreman
J JACKS Foreman
G. MERTEN
GENERAL FOREMAN
DDA
CYLINDER LINERS
L PEYDATCH Foreman
J AGUILA Foreman
C HUNG Foreman
H. GEORGE
GENERAL FOREMAN
DDH
CYLINDER HEAD
C JONES Foreman
J BONK Foreman
A HALLMAN Foreman
G WINGS Foreman
W KRAWCZYK Foreman
F DISTEFANO Foreman
J WYATT Foreman
M. SIEMERS
GENERAL FOREMAN
DDJ
CYL. BLOCK & ASSY
A BANKS Foreman
P PATLICAN Foreman
K SIPILA Asst. "
G SCHMITT Asst. "
F SARKISIAN Foreman
DDK
PAINTING & SEALING
B CHMIELEWSKI Fmn
G. REICHEL
GENERAL FOREMAN
DDM
REWORKING
E KRYCZEWSKI Foreman
E CHAMPINE Foreman
W SIMPSON Foreman
A GRIMMER Foreman
L HINTON Foreman
P McCABE Foreman
T BECK Asst. "
B PALMER Asst. "
B FISHER Weld Tech
K SHARP Process
J JONES Process
THIRD SHIFT
E. C. BETTS
ASSISTANT MANAGER
SPECIAL ASSIGNMENT
F. WILSON
R. VanHALMOYEN
ASSISTANT MANAGER
C. W. WARWICK
SUPERINTENDENT
R. MORGAN
GENERAL FOREMAN
DBB
MATERIAL CONTROL
R HASSLER Foreman
L SCHELL Asst. "
L. COOK
GENERAL FOREMAN
DDD
CRANKSHAFTS
J MILE Foreman
R YOUNG Foreman
W DRUMM Foreman
G CHAMP Foreman
S GIUNDELA Foreman
B LESTER Foreman
J MELESKI Foreman
L FRAY Asst. "
C. KOPARL
GENERAL FOREMAN
DDB
CONN. RODS - BLADE
F CONCHUTT Foreman
J WHITE Foreman
W WAYE Foreman
O NITE Foreman
L NICHON Foreman
B BREYSKI Asst. "
W. WIESSNER
GENERAL FOREMAN
DDE
CONN. RODS - FORK
C SMITH Foreman
R CORNELL Foreman
R ERNEST Foreman
W HALTEMAN Foreman
F DEPER Foreman
B RILEY Foreman
L CHAPMAN Foreman
T MULLINS Foreman
C MILLER Foreman
O. MASSUCH
GENERAL FOREMAN
DDE
FINISH & CLEAN
R REVERED Foreman
D SUMMER Foreman
R BUSCH Foreman
J HUNT Foreman
G. MERTEN
GENERAL FOREMAN
DDA
CYLINDER LINERS
F KACIN Foreman
D NASH Foreman
E PAGE Foreman
H. GEORGE
GENERAL FOREMAN
DDH
CYLINDER HEAD
H CLIFF Foreman
W KRAWCZYK Foreman
W JAGNER Foreman
G FINLEY Foreman
L MARSHALL Foreman
C PETERSON Foreman
F TIESLER Foreman
E NIESLUCHOWSKI Fm
J MARKS Asst. "
F MARCIAN Asst. "
M. SIEMERS
GENERAL FOREMAN
DDJ
CYL. BLOCK & ASSY
F MAYANON Foreman
V TYCHULSKI Foreman
J SULLIVAN Asst. "
F HAFNER Asst. "
DDK
PAINTING & SEALING
J KUBETICH Foreman
G. REICHEL
GENERAL FOREMAN
DDM
REWORKING
E MEYERS Foreman
C BAILEY Foreman

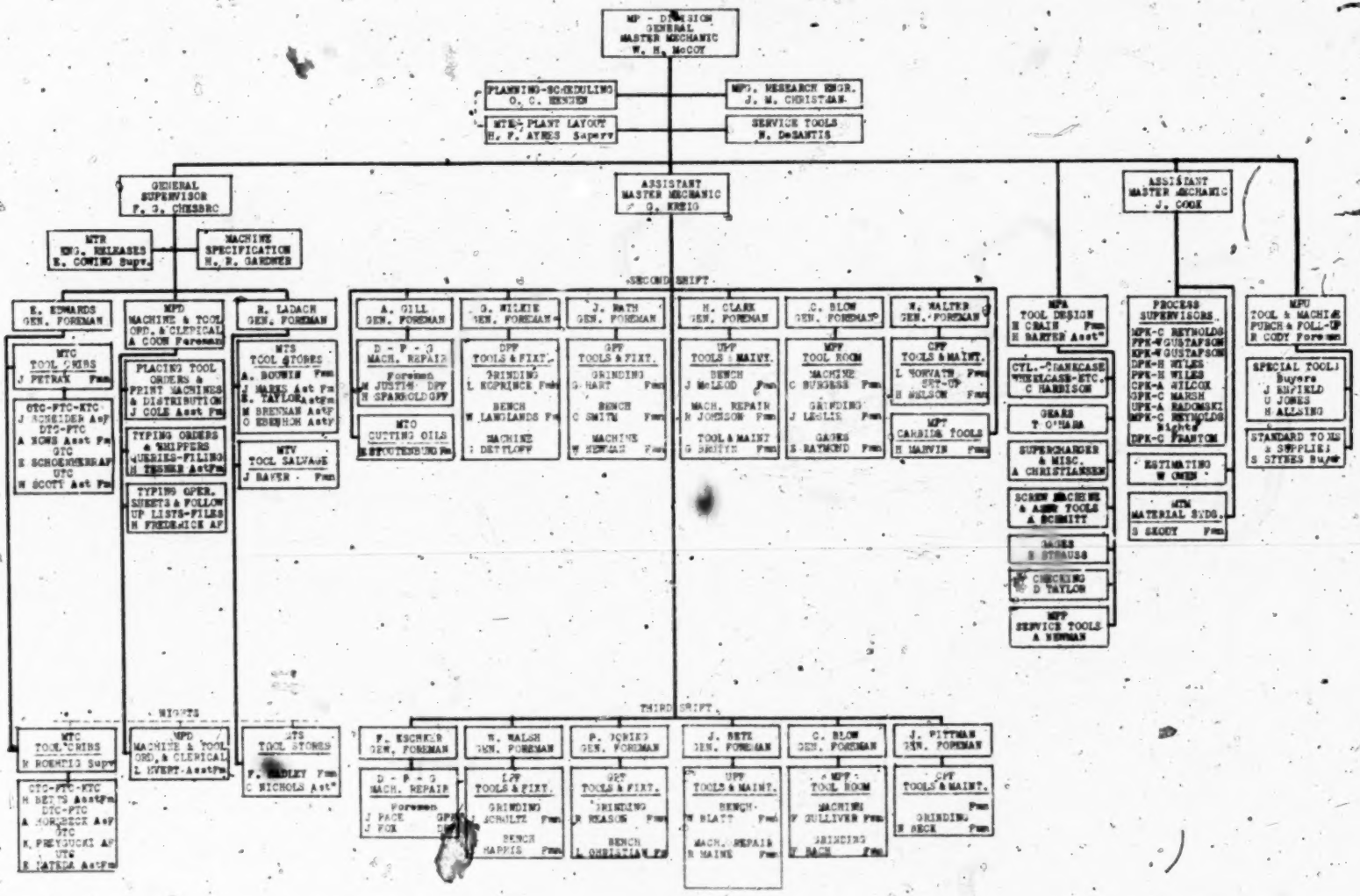


COMPANY'S EXHIBIT No. 22-D

1483

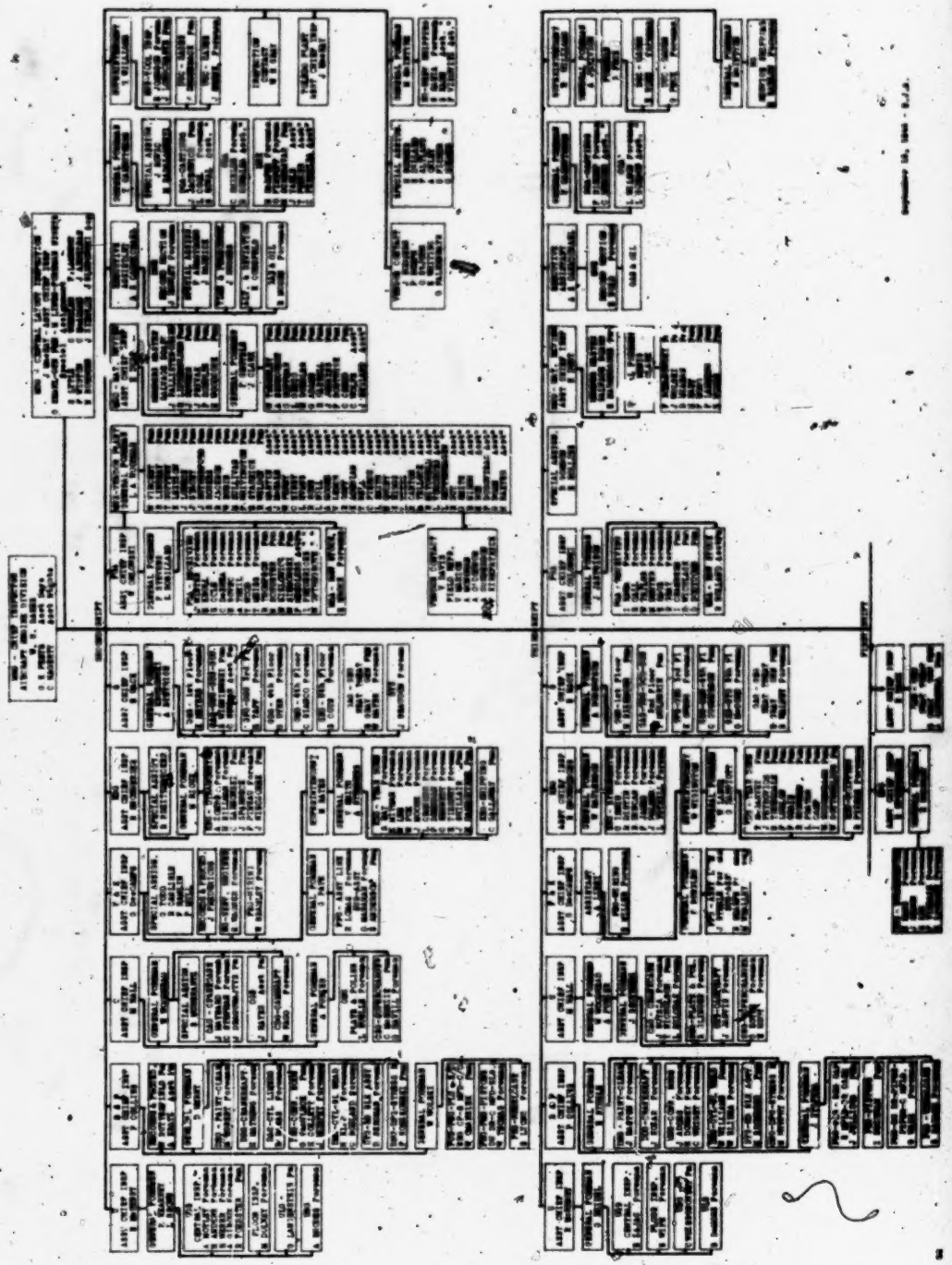


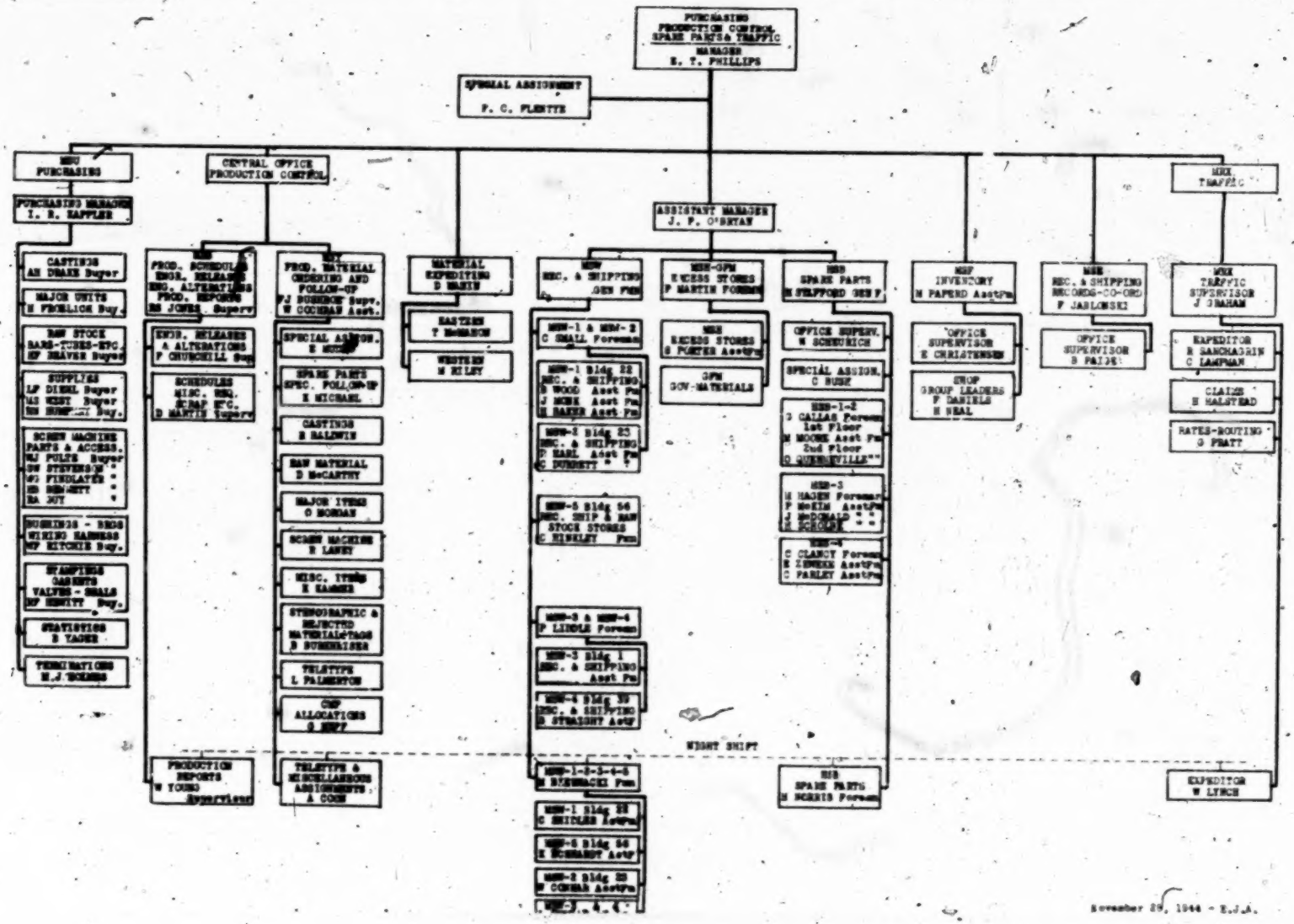
COMPANY'S EXHIBIT No. 22-E



COMPANY'S EXHIBIT No. 22-F 1485

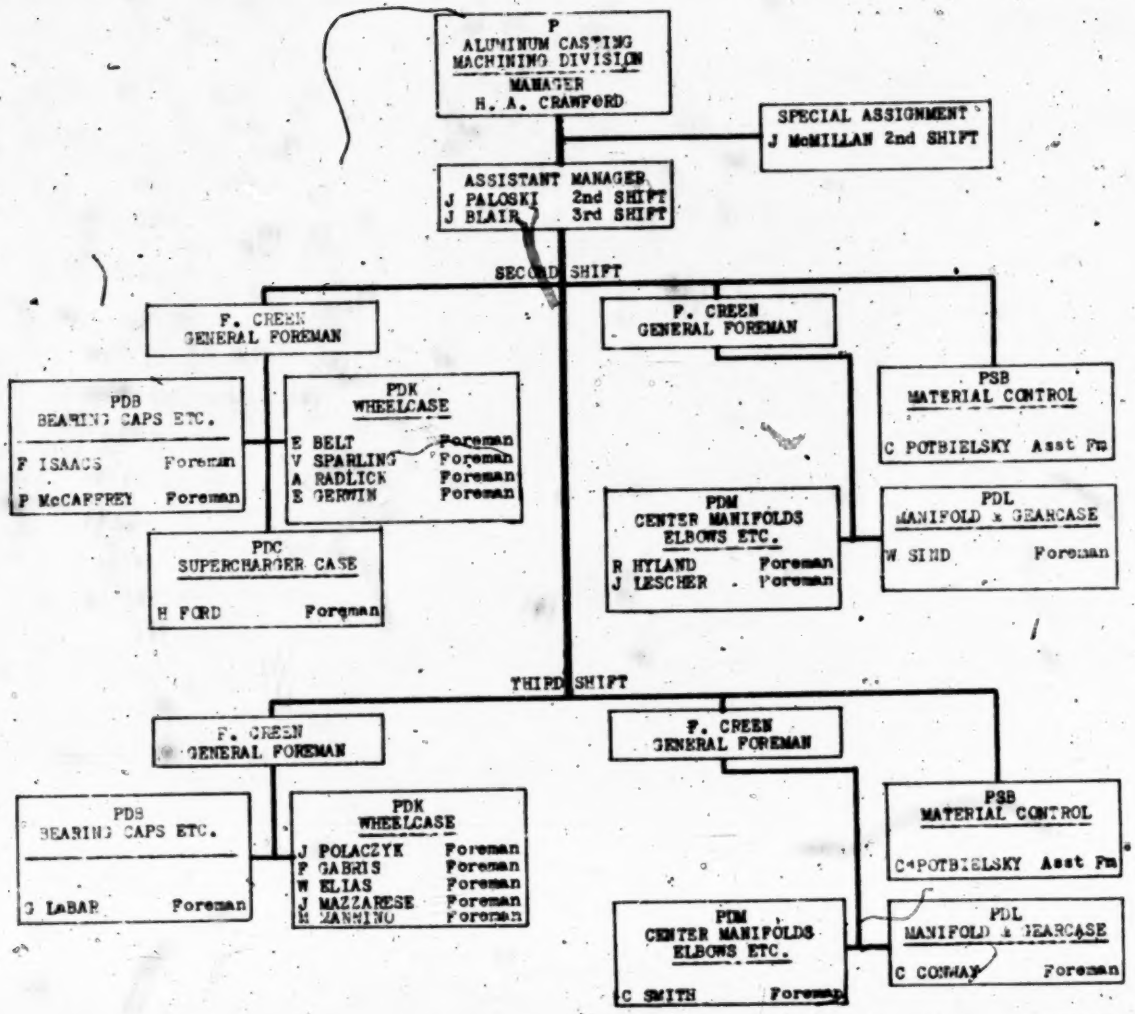
December 24, 1944 - E.J.A.



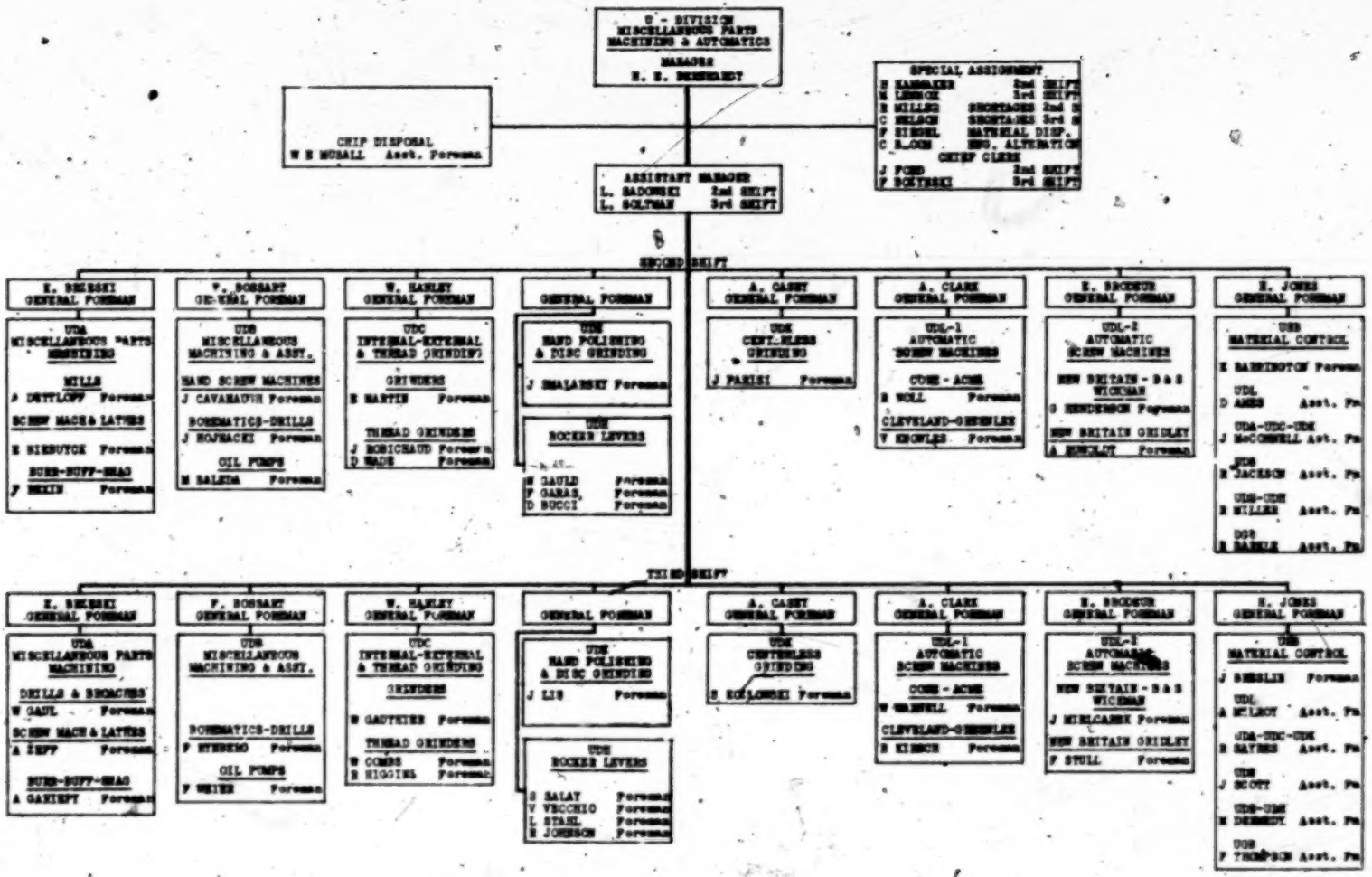


November 29, 1944 - E.J.A.

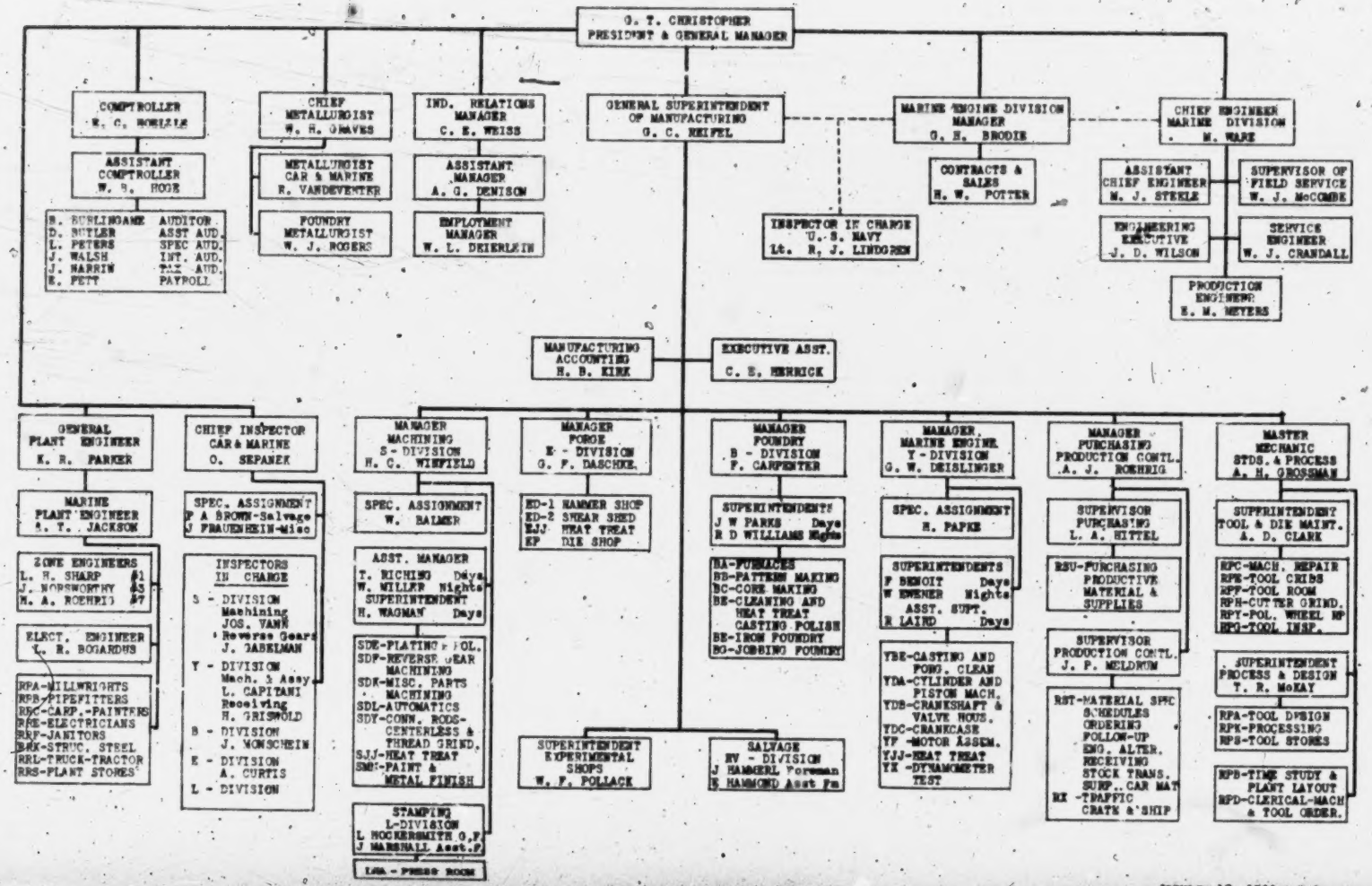
COMPANY'S EXHIBIT No. 22-H 1487



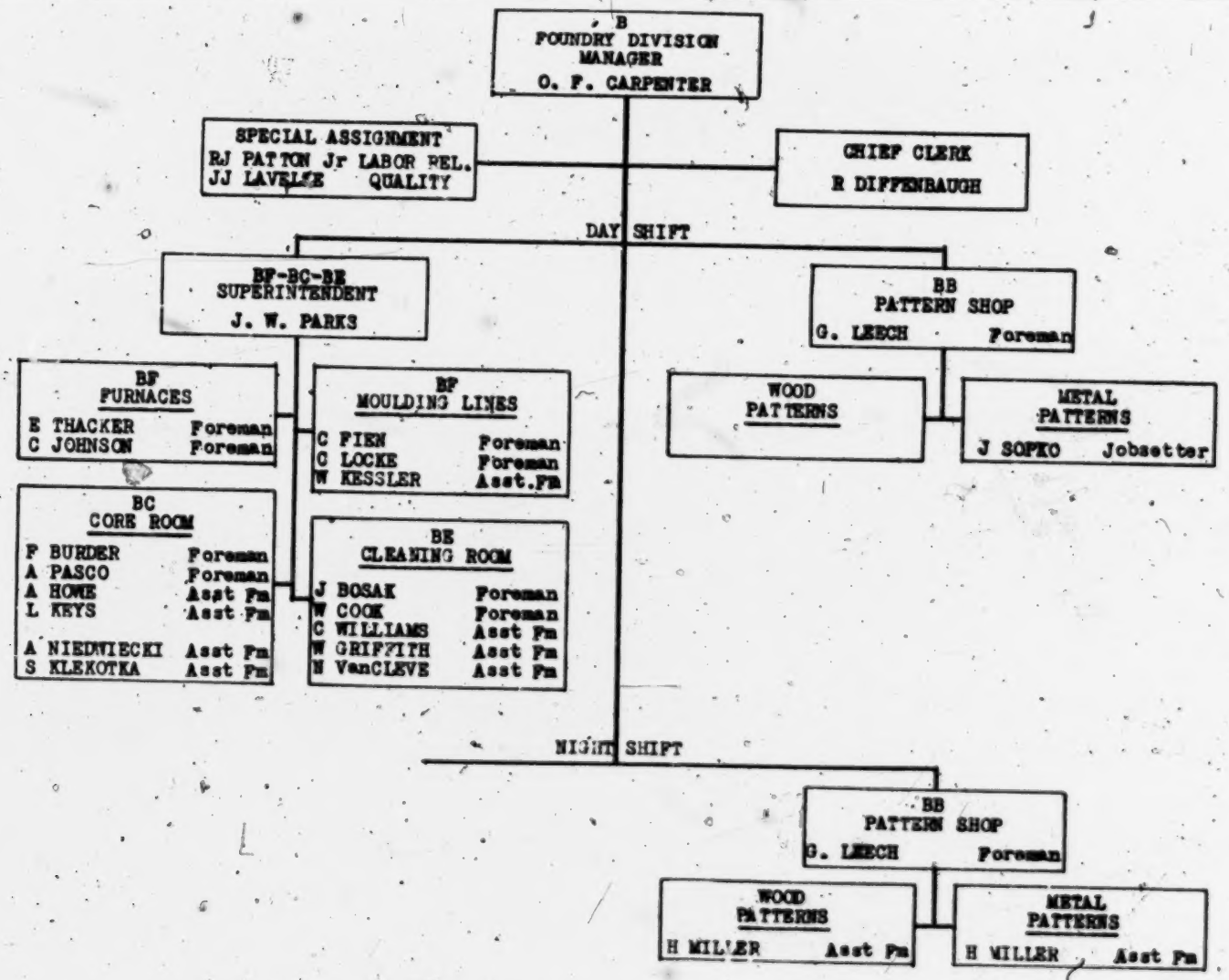
November 29, 1944 - E.J.A.

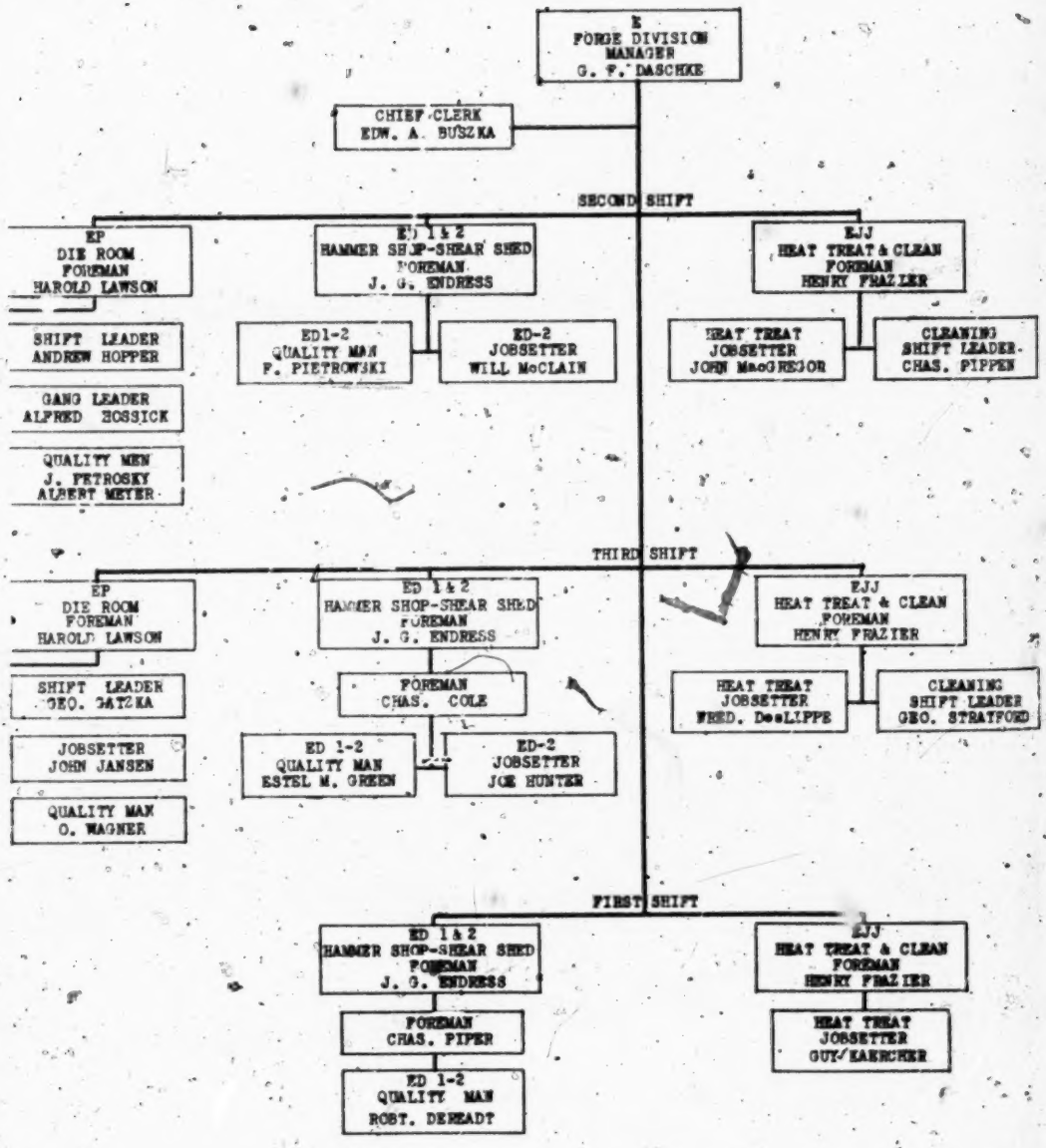

U - DIVISION
MISCELLANEOUS PARTS MACHINING & AUTOMATICS
MANAGER
H. E. DENNEHEY
CHIP DISPOSAL
W E MUBALL Asst. Foreman
SPECIAL ASSIGNMENT
ASSISTANT MANAGER
L. SADOWSKI 2nd SHIFT
L. SOLTMAN 3rd SHIFT
CHIEF CLERK
SECOND SHIFT
THIRD SHIFT
E. BRESKI GENERAL FOREMAN
F. BOSSART GENERAL FOREMAN
W. HANLEY GENERAL FOREMAN
GENERAL FOREMAN
A. CASEY GENERAL FOREMAN
A. CLARK GENERAL FOREMAN
E. BROGSON GENERAL FOREMAN
H. JONES GENERAL FOREMAN
UDA MISCELLANEOUS PARTS MACHINING
MILLS
SCREW MACH & LATHES
BURR-BUFF-SHAG
UDB MISCELLANEOUS MACHINING & ASST.
HAND SCREW MACHINES
BOREMATICS-DRILLS
OIL PUMPS
UDC INTERNAL-EXTERNAL & THREAD GRINDING
GRINDERS
THREAD GRINDERS
UDE HAND POLISHING & DISC GRINDING
UDE ROCKER LEVERS
UDK CENT.-LESS GRINDING
UDL-1 AUTOMATIC SCREW MACHINES
CONE - ACME
CLEVELAND-GRINDLEY
UDL-2 AUTOMATIC SCREW MACHINES
NEW BRITAIN - B & S WICKMAN
NEW BRITAIN GRIDLEY
UDS MATERIAL CONTROL

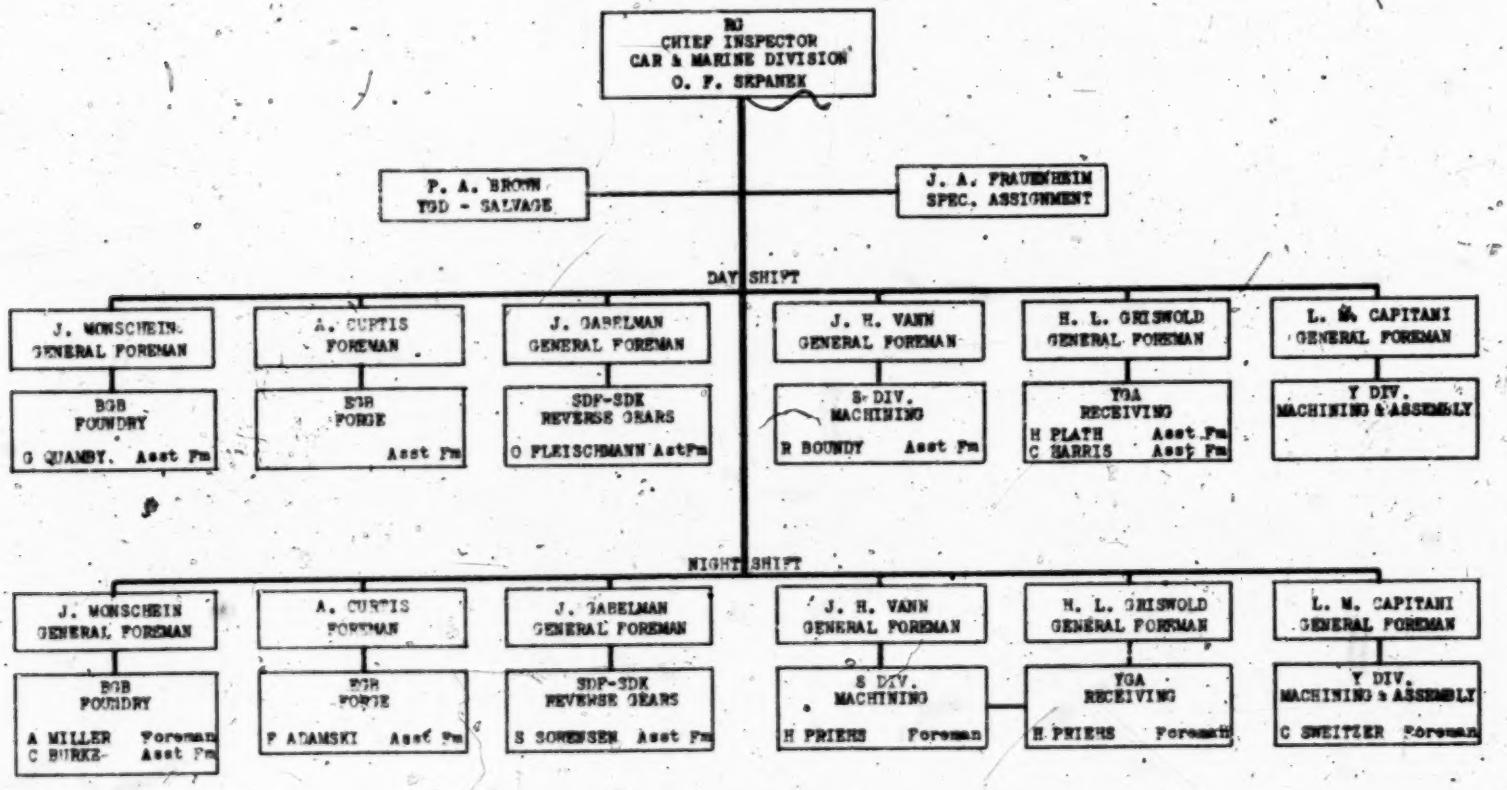
ORGANIZATION CHART



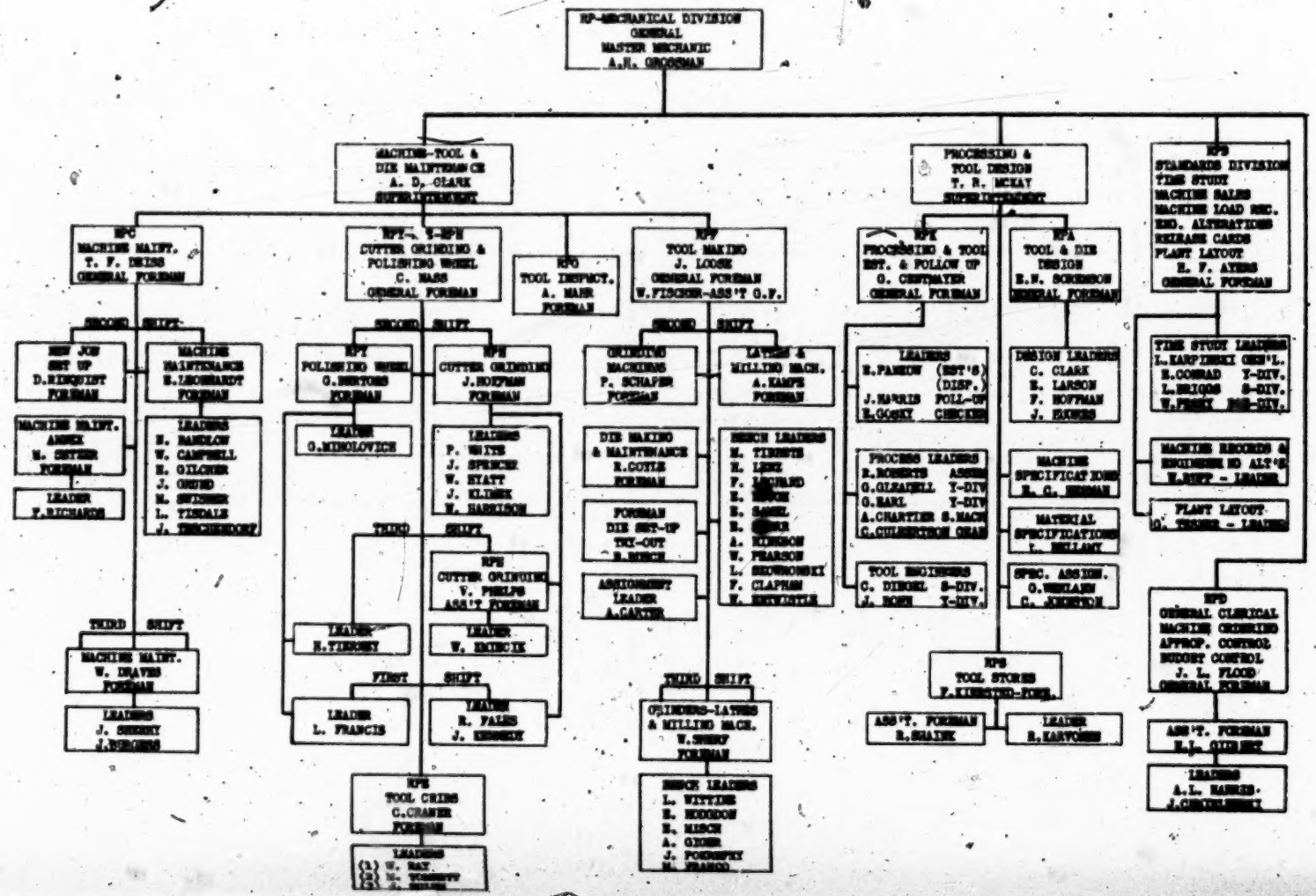
January 10, 1944-A.D.C.


B
FOUNDRY DIVISION
MANAGER
O. F. CARPENTER
SPECIAL ASSIGNMENT
RJ PATTON Jr LABOR REL.
JJ LAVELLE QUALITY
CHIEF CLERK
R DIFFENBAUGH
DAY SHIFT
BF-BC-BE
SUPERINTENDENT
J. W. PARKS
BB
PATTERN SHOP
G. LEECH Foreman
BF
FURNACES
E THACKER Foreman
C JOHNSON Foreman
BF
MOULDING LINES
C FIEN Foreman
C LOCKE Foreman
W KESSLER Asst.Fm
WOOD
PATTERNS
METAL
PATTERNS
J SOPKO Jobsetter
BC
CORE ROOM
F BURDER Foreman
A PASCO Foreman
A HOWE Asst Fm
L KEYS Asst Fm
A NIEDWIECKI Asst Fm
S KLEKOTKA Asst Fm
BE
CLEANING ROOM
J BOSAK Foreman
W COOK Foreman
C WILLIAMS Asst Fm
W GRIFFITH Asst Fm
H VanCLEVE Asst Fm
NIGHT SHIFT
BB
PATTERN SHOP
G. LEECH Foreman
WOOD
PATTERNS
H MILLER Asst Fm
METAL
PATTERNS
H MILLER Asst Fm


E
FORGE DIVISION
MANAGER
G. F. DASCHKE
CHIEF CLERK
EDW. A. BUSZKA
SECOND SHIFT
EP
DIE ROOM
FOREMAN
HAROLD LAWSON
SHIFT LEADER
ANDREW HOPPER
GANG LEADER
ALFRED HOSSICK
QUALITY MEN
J. PETROSKY
ALBERT MEYER
ED 1 & 2
HAMMER SHOP-SHEAR SHED
FOREMAN
J. G. ENDRESS
ED1-2
QUALITY MAN
F. PIETROWSKI
ED-2
JOBSETTER
WILL McCLAIN
EJJ
HEAT TREAT & CLEAN
FOREMAN
HENRY FRAZIER
HEAT TREAT
JOBSETTER
JOHN MacGREGOR
CLEANING
SHIFT LEADER
CHAS. PIPPEN
THIRD SHIFT
EP
DIE ROOM
FOREMAN
HAROLD LAWSON
SHIFT LEADER
GEO. MATZKA
JOBSETTER
JOHN JANSEN
QUALITY MAN
O. WAGNER
ED 1 & 2
HAMMER SHOP-SHEAR SHED
FOREMAN
J. G. ENDRESS
FOREMAN
CHAS. COLE
ED 1-2
QUALITY MAN
ESTEL M. GREEN
ED-2
JOBSETTER
JOE HUNTER
EJJ
HEAT TREAT & CLEAN
FOREMAN
HENRY FRAZIER
HEAT TREAT
JOBSETTER
FRED. DeeLIPPE
CLEANING
SHIFT LEADER
GEO. STRATFORD
FIRST SHIFT
ED 1 & 2
HAMMER SHOP-SHEAR SHED
FOREMAN
J. G. ENDRESS
FOREMAN
CHAS. PIPER
ED 1-2
QUALITY MAN
ROBT. DEREADT
EJJ
HEAT TREAT & CLEAN
FOREMAN
HENRY FRAZIER
HEAT TREAT
JOBSETTER
GUY KAERCHER



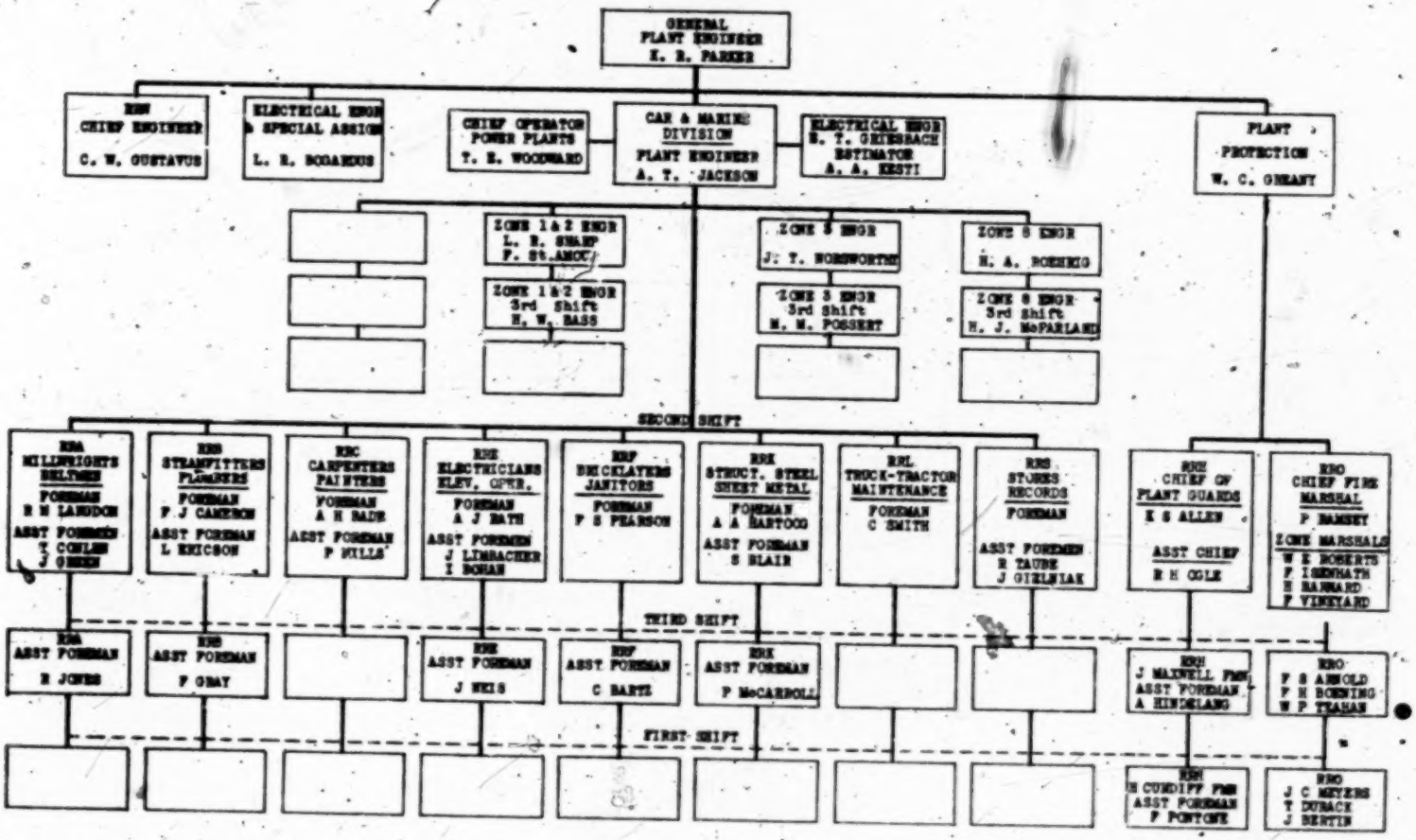
January 12, 1944-A.D.C.



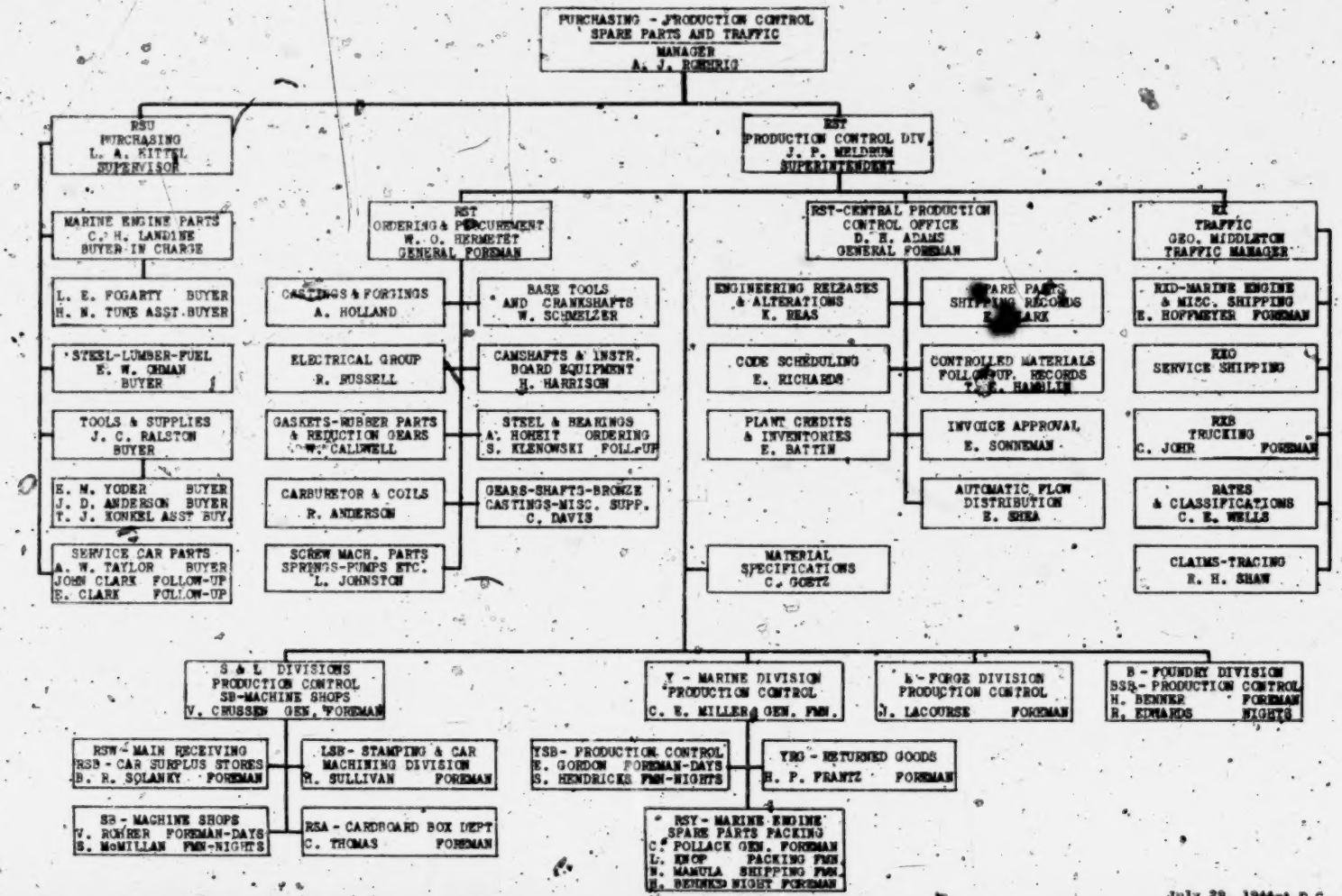
COMPANY'S EXHIBIT No. 23-E

COMPANY'S EXHIBIT No. 23-F 1495

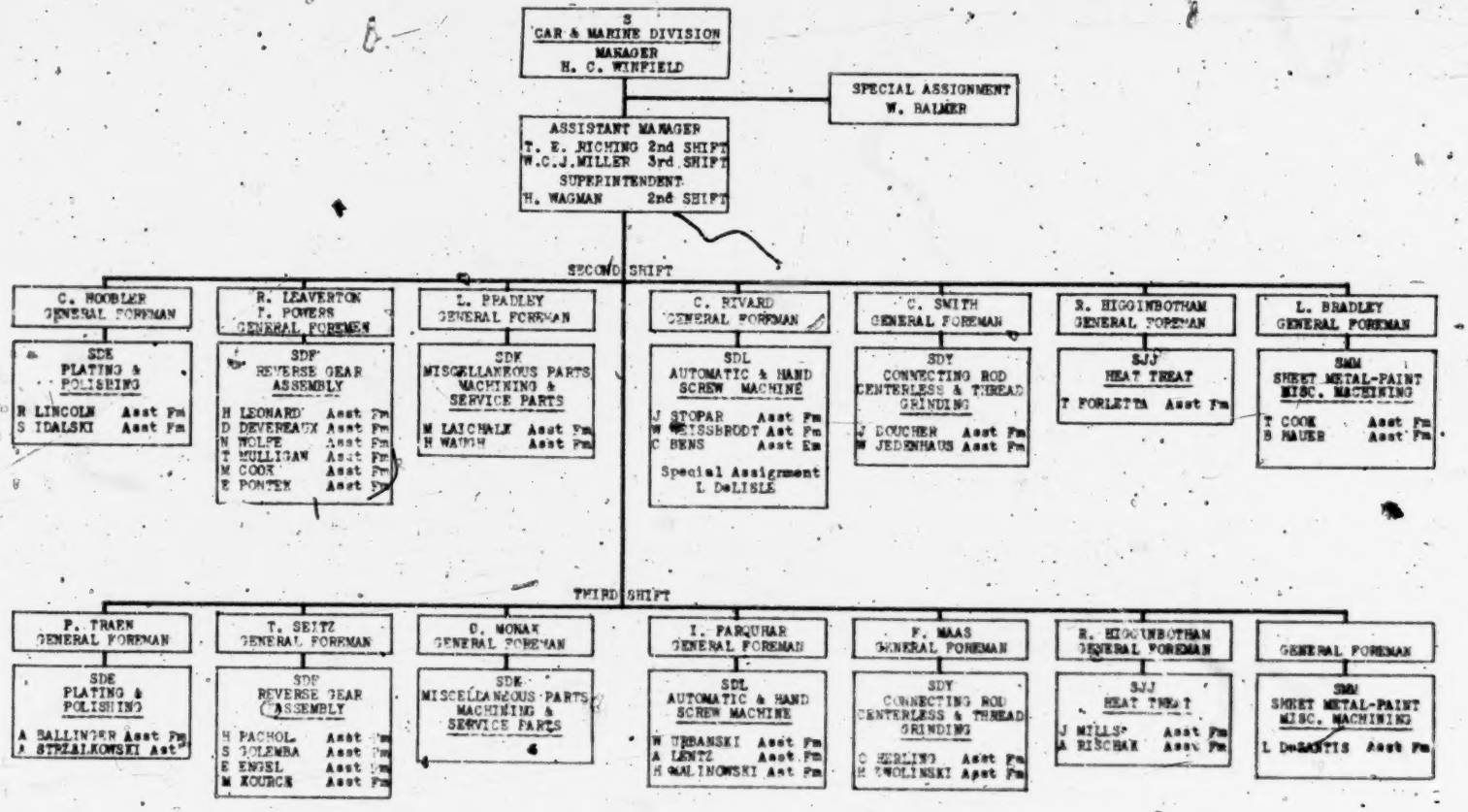
CAR & MARINE
PLANT ENGINEERING DIVISION
ORGANIZATION CHART



April 30, 1944 A.D.C.



July 29, 1944-A.D.C.



January 5, 1944-A.D.C.

MARINE ENGINE DIVISION
PLANT MANAGER
G. W. DEILINGER
SPECIAL ASSIGNMENTS
H. PAPKE
SUPERINTENDENTS
F. BENOIT DAYS
W. EWENER NIGHTS
ASST. SUPT.
R. LAIRD DAYS
SECOND SHIFT
C. GROBAR GENERAL FOREMAN
W. RICE GENERAL FOREMAN
J. WILKINS GENERAL FOREMAN
G. KLINE GENERAL FOREMAN
C. GROBAR GENERAL FOREMAN
O. BEYER FOREMAN
E. HILLIOUS GENERAL FOREMAN
T. MARKER GENERAL FOREMAN
E. REGUL GENERAL FOREMAN
YBE ROUGH CASTING & FORGING CLEANING
A SHINK Asst Fm
YDA-1 CYLINDER MACHINING
R BOWE Asst Fm
YDA-2 PISTONS & ROCKER LEVERS
S SACKS Asst Fm
YF ENGINE ASSEMBLY TEAR DOWN & MINOR ASSEMBLY
W BRADLEY Foreman
J SMITH Asst Fm
R WESSON Asst Fm
D TROMBLEY Asst Fm
YK DYNAMOMETER TEST
R SHADDON Asst Fm
YJJ WELDING POLISH & PLATING
J LA. Foreman
YDB-1 CRANKSHAFT & VALVE HOUSING
O BEYER Foreman
YDB-3 OIL & WATER PUMPS
L WEBSTER Asst Fm
YDB-4 SMALL PARTS MACHINING
R REMUND Asst Fm
YDC CRANKCASE
F NUSBAUM Asst Fm
THIRD SHIFT
C. GROBAR GENERAL FOREMAN
W. RICE GENERAL FOREMAN
J. WILKINS GENERAL FOREMAN
G. KLINE GENERAL FOREMAN
C. GROBAR GENERAL FOREMAN
O. BEYER FOREMAN
E. HILLIOUS GENERAL FOREMAN
T. MARKER GENERAL FOREMAN
E. REGUL GENERAL FOREMAN
YBE ROUGH CASTING & FORGING CLEARING
E SAUTNER Asst Fm
YDA-1 CYLINDER MACHINING
E KLISS Foreman
YDA-2 PISTONS & ROCKER LEVERS
O GOULD Foreman
YF ENGINE ASSEMBLY TEAR DOWN & MINOR ASSEMBLY
G KLEIN Foreman
W WOFFORD Asst Fm
R NOLEN Asst Fm
J CIARAMITORARI
YK DYNAMOMETER TEST
F SHAMBAUGH Asst Fm
YJJ WELDING POLISH & PLATING
L SLACK Asst Fm
YDB-1 CRANKSHAFT & VALVE HOUSING
W SMITH Asst Fm
YDB-3 OIL & WATER PUMPS
O PASSARELLI Fm
K STERELTON Asst Fm
YDB-4 SMALL PARTS MACHINING
M NEUMANN Foreman
YDC CRANKCASE
W HOLCOMBE Foreman
F DEBELAK Asst Fm
FIRST SHIFT
G. KLINE GENERAL FOREMAN
C. GROBAR GENERAL FOREMAN
YK DYNAMOMETER TEST
O DONOVAN Asst Fm
YJJ WELDING POLISH & PLATING
B ERIKSON Foreman

COMPANY'S EXHIBIT NO. 24.

Instructions Regarding Changes in Salaried Employee Policy.

Recording of Salaried Time by Means of Clock Cards:

As soon as facilities can be provided (presumably March 1, 1942) all salaried employees (exempt and non-exempt) will be required to register their starting time and quitting time on a clock card. With the institution of this system, the Salaried Employees' Time Record (Form No. RZ-602) sheet will be discontinued. Within a few days the Timekeeping office will notify each department head when a clock is available for his employees and suitable instructions will be provided.

A few key executives and employees who travel most of the time will not be included in the clock register system or any of the overtime or absence policies outlined and will be so notified. Anyone not notified will be expected to register by clock, when his department is notified to start on the clock system.

For the present, the clock card will be set up on a weekly basis, but it is anticipated that eventually salaried employees clock cards will be on a half-month basis.

Supervisors and foremen will be expected to provide the payroll clerk with a Time Exception Report (Aircraft Engine Departments Form MRZ-213—All Other Departments Form RZ-530-A) indicating the hours the non-exempt salaried employees under their supervision were authorized to work. These hours will be compared by the payroll clerk with the hours registered on the clock card and discrepancies reported to the supervisor for verification. Supervisors will not be required to report on the Time Exception Report the hours worked less than the regular hours, however, the payroll clerk will prepare a report for the Employment Department showing the absence and tardiness of each employee for purposes of the extra vacation plan calculation and periodically this data

Company's Exhibit No. 24

will be compiled and forwarded to each supervisor to assist him in his control of absence and tardiness.

Department heads and plant managers, of departments working a normal eight hour schedule, will not be required to turn in Time Exception Reports for exempt employees under their supervision for the regular five days of the week, but will be required to turn in a Time Exception Report for Saturdays and Sundays and the authorized legal holidays. However in departments authorized to work a schedule in excess of eight hours a day, the department head or plant manager will be required to furnish a Time Exception Report to cover the excess hours over eight a day worked by the exempt employees.

Under this plan the foreman or supervisor will report on the non-exempt salaried employees they supervise and the plant manager, division manager or department head will report on the exempt salaried employees they supervise.

Payment to Exempt Employees for Saturdays, Sundays and Legal Holidays:

Effective March 1, 1942, exempt employees will be paid for Saturday, Sunday and legal holiday time on a new basis. For each hour worked on Saturdays, Sundays and legal holidays, the exempt employee will be paid at the rate of time and one-half, provided he was authorized to work by his plant manager or department head. In order to qualify for overtime payment on Saturday or Sunday an employee must have worked the previous five days of the week. A foreman or supervisor who has been absent during the week, will not receive additional pay for Saturday. Overtime pay for Saturdays and Sundays will not be paid for hours worked in excess of the standard working hours of the department, which at the present time is eight hours in most departments and ten and one-half in a few. It is not necessary, however, for the department to work also before the exempt employee is eligible for overtime on Saturday, Sunday or a legal holiday, if the department head has given his approval to the exempt employee to work. This approval must come from an

employee on the executive list who does not participate in overtime payments himself.

In order to carry out this policy, all pay rates must be on a five day basis. Where an exempt employee's pay has been adjusted to a six day basis, it will now be readjusted to a five day basis. In general, this will be accomplished by taking five-sixths of his present six day rate. Of course, the employee whose salary rate is now on a five day basis will not be changed.

Since this additional pay will be in units of hours, the exempt employees hourly rate will be calculated as follows:

> Multiply the employee's monthly salary rate by 12 to get the equivalent yearly rate and divide that total by the product of 52 weeks times 40 hours. The result is the equivalent hourly rate. This calculation applies only to rates that are on a five day basis.

This additional compensation will be paid on the 10th and 25th of each month with the exempt employee's regular salary check. Because of the additional calculations involved, and in order to get the payroll out by the 10th and 25th, there may be a delay of a week in this extra payment but it will be paid with the next check and the employee will be advised with each check of the date the extra payment includes.

Payment to Exempt Employees for Additional Hours on an Authorized Departmental Schedule:

When a department, not an individual, has been authorized to work a schedule in excess of eight hours a day the exempt employees who are required to work with that department will be paid at time and one-half for the hours they work in excess of eight hours a day up to the number of hours authorized for the department. For example, when a department such as one in the D Division at the present time is on a work schedule of 10½ hours, time put in by the foreman that exceeds eight hours in any day will be paid for at the rate of time and one-half, but in the example given, no more than 2½ hours ($10\frac{1}{2} - 8 = 2\frac{1}{2}$) of overtime in one day will be paid for.

Company's Exhibit No. 24

The responsibility of controlling overtime particularly overtime to exempt employees will now devolve on the relatively small group of executives who do not participate in the plan. It is in order then to establish better controls and more restricted approvals of overtime than exists at present. This the executive will be expected to do and periodic reports will be furnished the management to show the trend of exempt overtime in particular, but also all salaried overtime.

Provision for Extra Days of Vacation for a Perfect Tardiness and Attendance Record:

For each calendar month that a salaried employee is not absent, or has not been late, he will be credited with an extra half day of vacation. However, if the employee is either absent or tardy he will not be credited with the extra half day for the month in which the absence or tardiness occurs. If an employee is absent after he has accumulated extra vacation days, his absence will offset these extra vacation days in direct ratio to his absence. For example, if an employee has had a perfect record for six months and has thus accumulated three extra days of vacation and then in the seventh month is absent for three days the absence of three days will wipe out the three days of extra vacation. If on the other hand he was absent only two days he would continue to have one day of extra vacation to his credit.

Tardiness will not be used to offset half days already credited, but will be used to offset the half day that would have been credited to the employee for the month in which the tardiness occurred.

When an employee's absence exceeds the extra vacation he has to his credit, he may be placed on the suspended roll. In other words, absence will be offset by extra vacation days until the extra vacation days are used up.

Since regular vacations are awarded on the basis of a salaried employee's service as of June 1, extra vacation accumulated under this plan will be awarded as of June 1, also. Starting with the month of June the employee will

accumulate extra vacation half days for his vacation the following year. Since this plan goes into effect March 1, an employee may acquire extra days of vacation of a day and one-half by June 1, 1942. These extra days may be taken as pay when an employee takes his regular vacation, however, an employee can not take his regular vacation in pay. In addition, neither the extra vacation nor the regular vacation can be carried over from year to year and accumulated. Neither the regular nor the extra vacation can be taken in advance of the regular vacation period. Department heads will be advised by the Employment Department of the amount of vacation each of their employees is eligible to receive so that they can plan their vacation schedule consistent with the efficient functioning of their department.

The reason for the absence or the tardiness will have no bearing on the operation of this plan.

Double Time for Sundays and Holidays for Non-Exempt Salaried Employees:

All non-exempt employees will receive double time for all hours worked on Sunday or the regular legal holidays, namely: New Year's Day, Decoration Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Double time on a holiday that occurs on a regular working day will be paid for by means of an extra hour of pay for each hour worked up to eight hours, since a salaried employee is paid straight time equivalent to a standard day for legal holidays through his regular salary. Each hour in excess of eight on a legal holiday that occurs on a regular working day and each hour worked on a legal holiday that occurs on Saturday or Sunday, will be paid for at double the employee's equivalent hourly rate.

Plant guards, power house engineers and others whose work week is staggered to provide seven day coverage will not participate in this policy.

All of the foregoing policy changes are to go into effect March 1, 1942.

A. G. DENISON.

Company's Exhibit No. 34

Policy Changes Affecting Salaried Employees

Packard Motor Car Company, Detroit, Mich.

The following changes in policy affecting salaried employees are to become effective March 1, 1942:—

Salaried Employees Entitled to Overtime Pay

1. All salaried employees entitled to overtime pay except plant guards, power house engineers and others working on a staggered week arrangement, are to receive double time for Sunday and the following legal holidays: New Year's Day, Decoration Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Salaried Employees Exempt from Overtime Pay

1. The standard workweek is to continue to be five days and all exempt employees whose salary rates have been adjusted to a six day basis, will be readjusted to a five day basis.

2. A salaried employee now exempt from overtime pay will receive additional compensation for work put in on the sixth and seventh days of the week. This additional compensation will be paid at the rate of time and one-half and will only be paid to employees who have worked the previous five days of the week, and only for hours worked up to and not in excess of the standard hours of the department. Authorization for these additional hours must be given by the department head.

3. A salaried employee now exempt from overtime pay working in a department that is on a work schedule in excess of eight hours a day will be paid at the rate of time and one-half for the hours he works in excess of eight each day up to the maximum additional hours authorized by the schedule. This policy is to apply only where the entire department has been authorized to work on a schedule in excess of eight hours a day.

4. For purposes of this policy, the following legal holidays: New Year's Day, Decoration Day, Independence

Company's Exhibit No. 24

Day, Labor Day, Thanksgiving Day and Christmas Day, will be considered additional days to be paid for at the rate of time and one-half.

All Salaried Employees

1. All salaried employees will be required to register their starting time and quitting time daily by means of a clock card. This practice will be started as soon as clock facilities can be made available.

2. All salaried employees will be governed by the following policy in regard to attendance and tardiness:

A salaried employee will be credited with an additional half day of vacation in addition to his regular vacation, for each calendar month that his record shows no tardiness and no absence. Absences, but not tardiness, will offset additional vacation days credited under this policy, thus, a half day of absence will offset a half day of additional vacation.

Employees will accumulate these additional vacation days over the year ending June 1. If an employee desires he may, instead of taking the extra days of vacation in time, elect to take them in pay, but they must be taken during the regular vacation period, and with the approval of his department head.

These policies will not apply to certain key salaried executives. In this group will be Plant Managers, Division Heads, Superintendents and their assistants.

Salaried employees whose duties require that they be away from Detroit most of the time so that their actual working hours cannot be recorded by clock card will not be included in these policies.

Regulations and procedures will be issued shortly.

These policies and the regulations governing them are subject to change at any time.

ALVAN MACAULEY,
Chairman of the Board.

COMPANY'S EXHIBIT NO. 25.

The Company issues this statement, covering in a general way, its present policy concerning salaries, overtime, absences, vacations, and separation and night pay insofar as it relates to exempt and non-exempt salaried employees. All of these policies have been put into effect with the pay period beginning October 16, 1944, or earlier.

Salary.

Employees who have heretofore been paid on a semi-monthly basis, namely the 10th and 25th of each month, will hereafter be paid on a bi-weekly basis. This change will become effective with the pay period beginning October 16 and payday will be the second Tuesday after the close of the pay period; thus for the bi-weekly pay period beginning October 16 and ending October 29 payday will be Tuesday, November 7.

Overtime.

Overtime payment covering the first five days worked in the regularly scheduled work-week is the same for both exempt and non-exempt employees. Time and one-half will be paid for all hours worked in excess of eight hours a day.

(Note: In case of exempt employees these extra hours are governed by the schedule established for the employee.)

When it becomes necessary to work Saturday (or the sixth day of the regularly scheduled work-week), time and one-half will be paid, provided forty straight-time hours have been accumulated within the week. When an exempt or non-exempt employee works on Saturday following an absence during the week, the corresponding number of hours absent will be paid for at straight time and the remainder of the hours worked, if any, on Saturday will be paid for at time and one-half.

On Sunday (or the seventh day), non-exempt employees will receive double time for all hours worked, provided the employee has been in attendance on each of the pre-

ceding six days. In the case of exempt employees, it was hoped that this same ruling could be made to apply, but in a recent ruling from the U. S. Treasury Department this request, made by the Company earlier in the year, was refused. Therefore, exempt employees will be paid on the present basis of time and one-half for work performed on the seventh consecutive day of the regularly scheduled work-week.

If an exempt or non-exempt employee is absent two or more days during a regularly scheduled work week, the first eight hours worked on Sunday, the seventh shift, will be paid for at straight time and the balance, if any, at time and one-half.

Absences.

Sick leave will be allowed up to the limits stated below. The reasons for the absence and approval for the payment of an absence must be clearly and completely stated on the Daily Time Exception Report. Absences not explained will not be allowed under any circumstances. Absences for illness in excess of seven consecutive calendar days must be covered by a physician's certificate. Where thoroughly justified, absences for other reasons comparable to illness, such as death in the immediate family, may be allowed.

Days to be Allowed—Non Exempt Employees.

Period	Allowances
Less than 6 months service	3 days
6 to 12 months service	6 days annually
Over 12 months service	12 days annually

Days to be Allowed—Exempt Employees.

Service as Supervisory Employee.

0 to 1 year	12 days annually
1 to 5 years	24 days annually
5 to 10 years	36 days annually
10 years or more	48 days annually

Note: Any absence allowance in excess of 12 days in any one year shall be for sickness only.

Company's Exhibit No. 25

Extra Vacation Credit.

The method of awarding extra vacation days, will be the same as heretofore for both non-exempt and exempt employees. One half day's extra vacation will be credited for every month where there is no tardiness, absence or failure to ring in. However, differing from the former policy, after the employee has earned the credit for a perfect month or months this credit will not be forfeited because of subsequent absences. In addition, should the employee leave the company, regardless of the reason, he will be paid for any extra earned vacation days when his clearance check is computed.

Vacation.

The basis for vacation, for both non-exempt and exempt salaried employees is as follows:

Continuous Service On Salary.

Prior to June 1.	Vacation.
1 year or more	2 weeks
6 months to 1 year	1 week

Each week of vacation allowed will be paid on the basis of the employee's weekly base salary plus 8 hours of straight time. The additional eight hours will be paid provided a work week of at least 48 hours is in effect for all employees and provided government agencies controlling stabilization permit such additional payment.

Separation Pay.

When a non-exempt or exempt salaried employee's services with the company are severed, separation pay will be allowed on the following basis:

Layoffs.

Employees with less than six months service	1 week salary
Employees with 6 months service or more	One half month's salary

Company's Exhibit No. 25

Dismissals.

Dismissal is defined as the release of an employee because of unsatisfactory service or lack of proper training for advancement. Separation pay is the same as above stated for layoffs.

Discharges.

Employees discharged for cause shall be paid to and including last day worked.

Resignations (When two weeks notice has been given the Company.)

An employee will be paid for the time he has accumulated toward his regular vacation. Thus, an employee who resigns after June 1 and has not taken his vacation will be paid for the vacation to which he is entitled. The employee resigning between December 1 and June 1 will receive one week's vacation pay provided he has completed the six months from June 1 to December 1. Employees resigning between June 1 and December 1 will receive no vacation pay unless they were entitled to a vacation as of June 1, which they had not taken.

Resignations (Without two weeks notice.)

Will be paid up to and including last day worked.

Inductions Into Armed Services.

Employees inducted into Armed Services will receive vacation pay on same basis as those who resign and give two weeks notice. Separation pay will be allowed on a 48 hour straight time basis if at the time of separation a work week of at least 48 hours is in effect generally and provided government agencies controlling stabilization permit payments on an extended work week basis.

Night Premium Pay.

Non-exempt salaried employees who work on shifts beginning in the afternoon or night, will receive 5 cents additional for each hour worked. This extra 5 cents is subject to overtime rates.

The Company, earlier this year, requested permission from the Treasury Department to pay a 5% night premium

to exempt employees. This was refused, and a 5c premium allowed instead.

PACKARD MOTOR CAR COMPANY.

Note: As this notice is not being posted on the bulletin boards, will you please advise the salaried employees of your department of its contents.

COMPANY'S EXHIBIT NO. 28.

April 25, 1944

To the Executive Board of the
International Union,
United Automobile Workers of America

We, the undersigned, foremen, general foremen, and supervisors under the status of superintendents, employed by Packard Motor Car Company, respectfully petition your honorable body for the privilege of forming an organization affiliated with the Congress of Industrial Organizations.

We have contacted Mr. George Addes, International Secretary, and have been advised that this procedure is correct in making this request.

All other employees of Packard Motor Car Company belong to organizations affiliated with the C. I. O, and enjoy the privilege of collective bargaining, and an opportunity to protest against discrimination. They also have an opportunity to protest against unfair policies and the enforcement of unjust and unfair practices. All of these things are denied to these petitioners in their present state of disorganization, and they are desirous of obtaining the same privileges.

Many of these petitioners having previously been members of the N. A. W. A. believe that only through this medium of representation can truly harmonious relations be enjoyed. We, therefore hope that your honorable body will act favorably on this petition.

Sincerely yours,

DATE 7-7-44

RECOMMENDATION FOR TOOL OR OPERATION CHANGE

MACH. NO. Gisholt
OPER. NO. Midland

NAME Gear S/C Impeller Shaft 616568

OPERATION Of #10 C.31

CHANGE TO BE MADE Remove from oper. 10 and place in oper. 240 " Form 90° Rad on inside of Gear.

REASON

Remove oper 10 Tool # 241107
" " 10 " 214455-
" " " Rear tool block Std.

Add oper 10 Tool 214453
" " 240 " 214455-

Used 2 Cutters 1945 25316 #2
Grinder 1945 25316 #2
Grinder 1945 25316 #2

REQUESTED BY	APPROVED BY	DISPOSITION	COST	COMPLETED
A. Lynch				
DEPT.				

COMPANY'S EXHIBIT No. 31

1511

DATE 4-29-44

RECOMMENDATION FOR TOOL OR OPERATION CHANGE

TOOL NO.
MACH. NO. 30588 1
OPER. NO. 30C32

BASE Gear - S/C Intermediate Pc # 616576

OPERATION Form recess to 5.430 +-.005 dia Will .200 Rad. Rgh. Interface of Int. gear to .485 +-.005 Width form.

CHANGE TO BE MADE .050 Rad to 5.180 +-.005 dia. Rgh. form angular face tangent to both radii

Please change operation & tools to the way operation now being run

also replace the 5 horse power motor with a 7½ horse motor

ORDERS 153460 & SHEETS CHANGED 5-3-44

Reason 50% Speed up of Operation

REQUESTED BY	APPROVED BY	DISPOSITION	COST	COMPLETED
		C. Hartel 5-18-44		
DEPT. 910X				

1512 COMPANY'S EXHIBIT No. 32

Bellamy-RPE
Hammond-RPE
Leonard-MER
Skiston-SSU
Haas-RPE
Orr-RPE

(Emj)

MATERIAL SPECIFICATION DEPARTMENT

TEST NO. 1001

C-37
1-2

REPORT OF TRIAL TEST
STANDARD MATERIAL & TOOLS

ISSUED TO Mr. Bellamy-RPE Dept. Mr. Haas RPE Dept. DATE 3-13-43

ARTICLE NOW USED Heller Bros. Files(Misc. Lengths)Mch. Files

MAKE Heller Bros. SYMBOL OR TOOL NO. MP-9265-B

DEPT. RPE OPERATION Sharpen Band Saws.

MACHINE Misc. Saw. Sharpeners. COOLANT MATERIAL

PART NAME & NO. Misc. Band Saws. NO. OF PARTS PER

HISTORY To determine quality of following files in comparison with files now in use.

(1) Doz.

RESULT OF TEST

Simonds Saw & Steel Co.,
300 Bates Street,
Detroit, Michigan
Att. Mr. Skibbe.

ARTICLE TESTED 6" Double Cut Taper Files (For machine Saw Filing) MAKE

TEST STARTED COMPLETED NO. OF PARTS PER

OPERATION TIME REDUCED INCREASED SAVINGS PER CARS

REMARKS Not as good as file now being used only got 3 to 5 saws with trial file, as compared to 10 or 11 with our standard File MP-9265-B -C. Haas Material used up during test.

PREVIOUS SYMBOL OR TOOL NO MP-9265-B SYMBOL OR TOOL NO ASSIGNED Same

SOURCE 1ST CHOICE Present Source
2ND CHOICE

TEST CONDUCTED BY Spencer DISPOSITION OF PRESENT STOCK Use

APPROVED BY Haas
DEPT. FOREMAN DIV. SUPT. SUPERVISOR DIV. SUPT. DEPT.

PA 98

Bellamy - RPE
Wiersbeck - RPS
Leonard - MPM
Ralston - RSV
Maas - RPH
Foric - RPH

6

RECEIVED
MAR 11 1942
RPD DEPT.

MATERIAL SPECIFICATION DEPARTMENT

TEST NO. 1001

REPORT OF TRIAL TEST
STANDARD MATERIAL & TOOLS

ISSUED TO Mr. Bellamy - RPE Dept. - Mr. Maas - RPH Dept. DATE 3/5/42

ARTICLES NOW USED Heller Bros. Files (Misc. Lengths) Hol. Files.

MAKE Heller Bros. SYMBOL OR TOOL NO. NP-9265-B

DEPT RPH OPERATION Straight Band Saws

MACHINE Misc. Saw Sharpeners COOLANT — MATERIAL —

PART NAME & NO. Misc. Band Saws NO. OF PARTS — PER —

HISTORY To determine quality of following files in comparison with files now in use.

(1) Doz. RESULT OF TEST Simonds Saw & Steel Co, 300 Baths St. Detroit ATTN. Mr. SKIBBE

ARTICLES TESTED 6" Double Cut Taper Files (for Machine Saw Filing) MAKE —

TEST STARTED — COMPLETED — NO. OF PARTS — PER —

OPERATION TIME REDUCED INCREASED — SAVINGS PER — CARS —

REMARKS Not as good as file now being used. Only get 3 to 5 runs with Trial Files as compared to 10 or 11 with our standard file NP-9265-B C. Maas

PREVIOUS SYMBOL OR TOOL NO. NP-9265-B SYMBOL OR TOOL NO. ASSIGNED Same

SOURCE 1ST CHOICE Present Source

2ND CHOICE —

TEST CONDUCTED BY [illegible] DISPOSITION OF PRESENT STOCK Use

APPROVED BY [illegible] DEPT. FOREMAN — DIV. SUPT. — L. B. Bellamy SPEC. DEPT.

PA 99

REQUEST FOR TEST MATERIAL

SERIAL NO. DATE 12/5/42 ORDER NO. TM 1001

ORDER FROM Simonds Saw & Steel Co. CHARGE RPH-2

ADDRESS 300 Baker St. Detroit ATTN MR. SKIBBE DEPT. RPH

TERMS F. O. B.

THIS MATERIAL TO BE RECEIVED BY RPS

QUANTITY (1 Doz.) DESCRIPTION 6" Double Cut Taper Files PRICE

For Machine Saw Sharpening $ 2.22

PART NO. Misc. NAME Band Saws

OPERATION NO. ✓ NAME Sharpen Band Saws

MACH. NO. Misc. NAME Saw Sharpening Machs. MODELS

REASON For comparative trial against files never use for this purpose

CHARGE ☒ NO CHARGE ☐ WILL MATERIAL BE RETURNED AFTER TEST YES ☒ NO ☐

WHEN MATERIAL IS RECEIVED NOTIFY Jerr. Ballamy. R.P.E. Dept. Mr. Haase. RPH Dept. RPH

TEST WILL BE COMPLETED: DATE SEND MATERIAL TO R.P.H

DISPOSITION OF MATERIAL Use in Trial

DATE RECEIVED 12.18.42 IDENTIFICATION NUMBER

RECEIVED BY RPS 1113.

IF APPROVED THIS MATERIAL WILL REPLACE NP-9265-D

REQUESTED BY (DEPT. HEAD) [signature]

REQUESTED BY (GENERAL FOREMAN)

APPROVED [signature]

(gmj).

Bellamy-H
Kierstead-RJ
Ralston-RSU
Leonard-MTH
Rogers-RGJ
Fe-BA
Supt. B

C. 31
4-2

MATERIAL SPECIFICATION DEPARTMENT

TEST NO 1004

REPORT OF TRIAL TEST
STANDARD MATERIAL & TOOLS

ISSUED TO Mr. Rogers DATE 3-13-43

ARTICLE NOW USED

MAKE SYMBOL OR TOOL NO

DEPT BA OPERATION Flux Molten Alum.

MACHINE COOLANT MATERIAL

PART NAME & NO Misc. NO OF PARTS PER

HISTORY For Trial Test

25 lbs.

RESULT OF TEST

ARTICLE TESTED Apex. Alum Flux MAKE Apex Smelting Co., 2577 W. Taylor St. Chicago, Ill.

TEST STARTED COMPLETED NO OF PARTS PER

OPERATION TIME REDUCED INCREASED SAVINGS PER CARD

REMARKS Not satisfactory-no improvement over present flux now in use

Material used up during test.

PREVIOUS SYMBOL OR TOOL NO Not Assigned SYMBOL OR TOOL NO ASSIGNED None

SOURCE 1ST CHOICE

2ND CHOICE

TEST CONDUCTED BY DISPOSITION OF PRESENT STOCK Use

APPROVED BY R.E. Rogers DEPT. FOREMAN DIV. SUPT. R.B Bellamy SUPERVISOR MAT'L SPEC. DEPT.

PA 99

Bellamy - RPE
Kirkstead - RPS
Ralston - RSU
Leonard - MEM
W. Rogers - RGJ
Fore - BH
Supt. B

RECEIVED
MAR 2 1943
RMD DEPT.

MATERIAL SPECIFICATION DEPARTMENT

TEST NO. 1004

REPORT OF TRIAL TEST
STANDARD MATERIAL & TOOLS

ISSUED TO Wm Rogers DATE 1/5/43

ARTICLE NOW USED

MAKE SYMBOL OR TOOL NO.

DEPT BA OPERATION Flush molten Aluminum

MACHINE COOLANT MATERIAL

PART NAME & NO. Misc. NO. OF PARTS PER

HISTORY For Trial Test

25 lbs.

RESULT OF TEST

Apex Smelting Co.
1537 W. Taylor St.
Chicago

ARTICLE TESTED Apex Aluminum Flush MAKE

TEST, STARTED COMPLETED NO. OF PARTS PER

OPERATION TIME REDUCED INCREASED SAVINGS PER CARS

REMARKS: Not satisfactory - no improvement over present flux now in use.

Material used up during test.

PREVIOUS SYMBOL OR TOOL NO. Was Assigned SYMBOL OR TOOL NO. ASSIGNED See

SOURCE { 1ST CHOICE
2ND CHOICE

TEST CONDUCTED BY DISPOSITION OF PRESENT STOCK Use

APPROVED BY Wm. Rogers FOREMAN DIV. SUPT. SUPERVISOR MAT'L SPEC. DEPT.

PA 93

COMPANY'S EXHIBIT No. 38

REQUEST FOR TEST MATERIAL

SERIAL NO. / DATE December 16, 1942. ORDER NO. TM 1004

ORDER FROM Apex Smelting Co. CHARGE X1

ADDRESS 2537 W. Taylor Street, DEPT. 34

Chicago, Illinois. TERMS F. O. B.

THIS MATERIAL TO BE RECEIVED BY

QUANTITY	DESCRIPTION	PRICE
50 pounds	Apex Aluminum Flux	$5.00

PART NO. NAME

OPERATION NO. NAME Apex Aluminum Flux

Use: use in fluxing molten aluminum

MACH. NO. NAME

READER MODEL

CHARGE [X] NO CHARGE [ ] WILL MATERIAL BE RETURNED AFTER TEST YES [ ] NO [X]

WHEN MATERIAL IS RECEIVED NOTIFY Mr. Rogers

TEST WILL BE COMPLETED: DATE March 1, 1943. SEND MATERIAL TO 321 - 2 Division

DISPOSITION OF MATERIAL To be used in fluxing molten aluminum

Invoice paid. 3-17-43 JJ Ford

DATE RECEIVED 1-21-43 IDENTIFICATION NUMBER

RECEIVED BY RPS 1104

IF APPROVED THIS MATERIAL WILL REPLACE

REQUESTED BY Harry Rogers

REQUESTED BY

APPROVED

APPROVED

Bellamy-RPK
Hierstead-RPS
Ralston-RSU
Leonard-MTM
Fuller-E
Fore-E-Div.

(gmj)

MATERIAL SPECIFICATION DEPARTMENT

40
1-2

TEST NO. 1017

REPORT OF TRIAL TEST
STANDARD MATERIAL & TOOLS

ISSUED TO Mr. Bellamy-RPK-Mr. Fuller-E-Div. DATE 5-13-43

ARTICLE NOW USED "Pashade" Eyeshield

MAKE Professional Optical Co., SYMBOL OR TOOL NO NP-9494-L

DEPT E-Div. OPERATION Misc.

MACHINE COOLANT MATERIAL

PART NAME & NO Misc. NO OF PARTS PER

HISTORY Following required for comparative test as against present eye-shield NP-9494-L

---

1 doz. "EYEGARD" Shields
1 doz. Replacement windows
for EYEGARD

RESULT OF TEST

Boyer Campbell Co.,
Detroit, Michigan

ARTICLE TESTED MAKE

TEST STARTED COMPLETED NO OF PARTS PER

OPERATION TIME REDUCED INCREASED SAVINGS PER CARS

REMARKS Above Eyegard, trade name Monogoggle of American All Safe Co., Inc., Buffalo, New York, are not as satisfactory for our work as Goggles by Watchemoket Optical Co., Inc.,-objection-prespiration inside goggle blinds operator or cuts down vision.

PREVIOUS SYMBOL OR TOOL NO SYMBOL OR TOOL NO ASSIGNED

SOURCE
1ST CHOICE Pashade-NP-9494-L
2ND CHOICE Utility Goggle by Watchemoket

TEST CONDUCTED BY Fuller DISPOSITION OF PRESENT STOCK Use Up

APPROVED BY Daschke Bellamy
DEPT. FOREMAN DIV. SUPT. SUPERVISOR MAT'L SPEC. DEPT.

PA 99

Bellamy - APE
Kreistad - APS
Baldon - MSU
Leonard - MTM
Fuller - E
Tool - E Div

6

MATERIAL SPECIFICATION DEPARTMENT

TEST NO. 1017

REPORT OF TRIAL TEST
STANDARD MATERIAL & TOOLS

ISSUED TO Mr. Bellamy APE Mr. Fuller E-Div DATE 2/24/43

ARTICLE NOW USED "Packade" Eyeshield

MAKE Professional Optical Co., SYMBOL OR TOOL NO NP-9494-L

DEPT E-Div OPERATION Insp.

MACHINE COOLANT MATERIAL

PART NAME & NO. Misc NO. OF PARTS PER

HISTORY Following required for comparative Test as against present eyeshield NP-9494-L

1 doz. "EYEGARD" Shells
1 doz. Replacement Windows

RESULT OF TEST

ARTICLE TESTED for Eyegard MAKE Boyer Campbell Co Detroit

TEST STARTED COMPLETED NO. OF PARTS PER

OPERATION TIME REDUCED INCREASED SAVINGS PER CARD

REMARKS "Eyegard" trade name "Monogoggle" of American Allsafe Co Inc Buffalo New York. Are not as satisfactory for Boyer work as Goggles by Watchemoket Optical Co Inc Cylcon - ventilation inside goggle blinds and dust and fumes

PREVIOUS SYMBOL OR TOOL NO SYMBOL OR TOOL NO ASSIGNED

SOURCE 1ST CHOICE Packade NP 9494 L
2ND CHOICE Wilson Goggle Watchemoket

TEST CONDUCTED BY W. H. Fuller DISPOSITION OF PRESENT STOCK Use up

APPROVED BY [signature] [signature] [signature]
DEPT. FOREMAN DIV. SUPT. SUPERVISOR MAT'L SPEC. DEPT.

PA 99

REQUEST FOR TEST MATERIAL

SERIAL NO. DATE 2/24/43 ORDER NO. TM 1019

FROM Roger Campbell CE CHARGE ED-1

TO Gibson ED-1

TERMS F. O. B.

THIS MATERIAL TO BE RECEIVED BY RPS

QUANTITY 1 Doz. DESCRIPTION "EYEGARD" (Eye Shield) PRICE

1 Doz. Replacement Windows for Eyegard Shields

160 Ea. @ $14.40

60 Ea. @ 7.50

PART NO. Misc. NAME Misc

OPERATION NO. — NAME Misc.

MACH. NO. Misc NAME —

REASON For comparative Test against present "Pasbode" Eyeshield NP-9484-L MODELS

CHARGE ☒ NO CHARGE ☐ WILL MATERIAL BE RETURNED AFTER TEST YES ☐ NO ☒

WHEN MATERIAL IS RECEIVED NOTIFY Mr. Bellamy EPK, Mr. Fuller E Dept

TEST WILL BE COMPLETED: DATE SEND MATERIAL TO RPS

DISPOSITION OF MATERIAL Used in test

Misc Rec'd 4-29-43
6-17-43 JSF

Pd in full 6-17-43

Ist shipment only

DATE RECEIVED 3-25-43 IDENTIFICATION NUMBER

RECEIVED BY RPS 1120

IF APPROVED THIS MATERIAL WILL REPLACE

REQUESTED BY [signature]

[signature]

[signature]

APPROVED [signature]

COMPANY'S EXHIBIT NO. 42.

Reissue—October 17, 1944

Shop Rules and Penalties for Violations

While it is not the desire of the Packard Company to unduly restrict the liberties of anyone, it is essential, as well as desirable for the welfare of all employees, that rules relating to proper conduct during working hours be enforced.

We are not attempting to list all plant rules in this bulletin, but some of those which have been most frequently broken and which today are causing a very unsatisfactory condition.

There is no intention on the part of the Company to void the provisions of the contract between the Company and the Union pertaining to collective bargaining and cases are to be handled as in the past.

Where the penalties are fixed, we expect negotiations to be limited to whether or not the rules have been broken. Unusual circumstances are to be given consideration.

Where the penalties are on a "to be negotiated" basis, we expect both stewards and supervision to use proper judgment for the betterment of plant conditions.

Rules	Penalties
1. Willful destruction or mutilation of company tools, machines, materials, equipment, or bulletins.	Discharge
2. Stealing of Company property or that of other employees.	"
3. Fighting — any employee striking a blow.	1 week 2 weeks To be negotiated.

Company's Exhibit No. 42

Rules	Penalties
4. Intentionally ringing clock cards of others.	1 week To be negotiated
5. Gambling.	3 days, six days To be negotiated
6. Being drunk on Company premises at any time.	Sent home for balance of shift 3 days
7. Bringing or selling liquor or having it on your person.	1 week To be negotiated
8. Sleeping during working hours.	1 day, 2 days 3 days
9. Employees leaving their department during working hours and without permission or legitimate reason.	1 day, 2 days 3 days
10. Smoking in restricted areas.	1 day, 2 days 3 days
11. Possession of unlawful weapons on Company property at any time.	Discharge
12. Coffee making during working hours. (One person may be allowed up to 15 min. before noon day lunch period for group.)	1 day, 3 days 6 days

13. Employees more than ½ hour late in returning to plant after lunch period will not be permitted entrance without permission of his foreman.

PACKARD MOTOR CAR COMPANY
LABOR RELATIONS COMMITTEE

Where more than one penalty is indicated, the first is for the first violation, the second is for the second violation, etc.

COMPANY'S EXHIBIT NO. 43.

September 1, 1944

Shop Rules and Penalties for Violations

While it is not the desire of the Packard Company to unduly restrict the liberties of anyone, it is essential, as well as desirable for the welfare of all employees, that rules relating to proper conduct during working hours be enforced.

We are not attempting to list all plant rules in this bulletin, but some of those which have been most frequently broken and which today are causing a very unsatisfactory condition.

It has been considered necessary to increase certain penalties, and so that all employees may be properly advised, and uniformity throughout the plant be attained, we list the following which are immediately effective:

Rules	Penalties
1. Destruction or mutilation of company tools, machines, materials or equipment.	Discharge
2. Stealing of Company property or that of other employees.	Discharge
3. Fighting — any employee striking a blow.	1 week 2 weeks to 30 days
4. Intentionally ringing clock cards of others.	1 week Discharge
5. Gambling.	1 week, 30 days, Discharge
6. Being drunk or bringing or drinking liquor on Company premises at any time.	1 week, 30 days, Discharge

Company's Exhibit No. 43

Rules	Penalties
7. Employees leaving their department or plant without legitimate reason.	1 day, 2 days, 3 days, Discharge
8. Sleeping during working hours.	1 day, 2 days, 3 days, Discharge
9. Smoking in restricted areas.	1 day, 2 days, 3 days, Discharge
10. Leaving place of work before quitting time.	Minimum of 15 min.
11. Possession of unlawful weapons on Company property at any time.	Discharge
12. Coffee making during working hours.	1 day, 3 days, 6 days

13. Employees more than ½ hour late in returning to plant after lunch period will not be permitted entrance without a pass from foreman.

PACKARD MOTOR CAR COMPANY
LABOR RELATIONS COMMITTEE

Where more than one penalty is indicated, the first is for the first violation, the second is for the second violation, etc.

B. C. BUDD

COMPANY'S EXHIBIT NO. 44.

Flash!! Foremen Organize!

R. J. Thomas, president of the UAW-CIO, has repeatedly said, "It's companies like Chrysler that make Unions like ours." Again history is repeating itself. With 14 Chrysler plants now under contract to CIO and this big Dodge Chicago Union raising a fury to get recognition a new union comes into the picture!

This union is also organized in all the other Chrysler plants and while their policies are not always in accord with ours of UAW we wish to welcome them on the true principles of honest unionism.

Welcome, Foremen's Association of America! For the benefit of the foremen who haven't got the inside dope, here it is. The first general get together of this International Association will be held at 2:00 P. M. Sunday, March 26, 1944, at Nielsen's—7830 S. Western Avenue. Liquid refreshments will be served and there will also be a delicious smorgasbord. On the program for that meeting is the signing of the charter, acceptance of new members, a short talk by an International Representative of the Foremen's Association on foremen's problems in Chrysler Plants and arranging of a social program for the spring season. There will be over 200 foremen and general foremen in attendance and any foreman who is interested is invited to attend. The initiation fee and dues are the same as our own UAW-CIO—$2.00 initiation fee and $1.00 per month dues.

We, of the UAW-CIO, watch the organizing of this group with interest, as we know if the foremen are organized they will be better equipped to understand our problems and the principles and fact of grievance procedure through union negotiation.

We wish to stress at this time, that our Local 274, and

the UAW-CIO, are not affiliated in any way with the Foremen's Association of America. We do know, however, this union is composed of many former CIO members and that this union was supported (when it organized) by the UAW when it had its fight in Detroit for recognition as a bargaining group.—Dodge Victory News, 3/24/44.

COMPANY'S EXHIBIT NO. 45.

Resolution on Collective Bargaining Rights of Foremen

(Passed by the Michigan State CIO Council on June 29, 1943)

Whereas: The National Labor Relations Board has refused to grant collective bargaining rights and other rights guaranteed by the Wagner Act to Foremen, and

Whereas: This action is discriminatory, unfair and unjust, now therefore be it

Resolved: That this Convention of the Michigan State CIO Council go on record supporting the fight of the Foremen to establish collective bargaining rights and other rights guaranteed by the Wagner Act, and be it further

Resolved: That copies of this resolution be sent to the Smith Committee, President R. J. Thomas, President Philip Murray and the Foreman's Association of America.

COMPANY'S EXHIBIT NO. 47.

(Rejected.)

Michigan Unemployment Compensation Commission
Office Correspondence

Date August 2, 1944

To: Principal Claims Examiner
Local Office #16

From: Claims Adjustment Section
by: X9

Master determination covering all claimants for benefits involved in this labor dispute for period May 16 through May 21, 1944.
John Wesoloski SS#363-05-8815

Re:

Joseph P. Baker, et al. (See attached list) SS# 364-05-0613
Address.....

Employer Briggs Manufacturing Company—Mack Plant
Address Detroit, Mich.

Determination: Disqualified.

Issue: Section 29 (c); labor dispute.

Facts: The Briggs Manufacturing Company, regularly employing upward of 15,000 workers, has since the war been engaged in production of vital war materiel for the

---

[ ] Reply not necessary.

[ ] Please make reply on reverse side of this form, and return one copy to Adjustment Unit, State Office. If other media is used for reply, attach one copy of this form to such media.

.....
State Office Claims Examiner

Company's Exhibit No. 47

Army and Navy. It operates seven distinct plants in the Detroit area, among them the Mack Plant employing approximately 10,000 workers; the Outer Drive Plant with approximately 3700 and the Hamtramck Plant with an estimated 1400. On Thursday, April 27, 1944, fifty-five foremen out of 286 on the first shift at the Conner Plant of this company walked off their jobs at 12:30 P. M. By Friday, April 28 the walkout extended partly to the Hamtramck and Mack Plants. At 9:00 A. M. Saturday, April 29, a general walkout of the foremen occurred at the Hamtramck, Mack and Outer Drive Plants. By May 1 all of the plants were affected with the exception of the Vernor Tool and Die Division. It was estimated that a total of approximately 1600 foremen had left their jobs. Such action upon the part of the foremen was part of a general walkout by an estimated 3200 foremen employed in the major war plants in the Detroit area. This walkout was in furtherance of a demand for War Labor Board and company recognition of and bargaining rights for their union organization known as the Foremen's Association of America or the F. A. A.

From and after May 1 the production of the Briggs Plants as a whole continued at a substantially reduced rate because of the lack of proper supervision and inspection. Such continuity of production as continued to exist was made possible by the fact that the hourly rated workers did not walk off the job. The loss of production together with a progressive deterioration in quality of the products was particularly marked in the Mack, Hamtramck and Outer Drive Plants. Working conditions inside those three plants grew increasingly chaotic by reason of the actions of the hourly rated employees. On May 16, 1944, the employees at the Outer Drive Plant refused to enter the plant through the picket line of foremen. A chief steward by the name of Clason of Department 32 of this plant representing Local 212 of the UAW-CIO marched in the picket line. Because of the failure of the employees to pass through the picket lines it became necessary to close this plant down on the second and third shifts on May 16, 1944.

Company's Exhibit No. 47

On May 17 the employees of the first shift also refused to pass through the picket line which resulted in the plant being closed till further notice. On May 17, 1944, in view of the general situation, Army and Navy procurement authorities decided it was no longer feasible to accept any more parts or assemblies from the three plants named and accordingly on May 17, 1944, pursuant to the advices from the Army and Navy procurement officials, the company posted a notice of closing at the Hamtramck and Mack Plants as well as at the Outer Drive Plant.

These plants remained closed until the date of May 19, 1944, at which time the foremen's strike having been settled the company began to call the hourly rated workers back. The company found it impossible to resume production substantially, however, until the date of Monday, May 22, 1944, when the chaotic conditions brought about by the strike were so far remedied that substantially normal production was regained.

The hourly rated workers in the three plants named were members of Local 212 of the UAW-CIO. The official union policy as reflected in a telegram addressed to this local and signed by George Addes as Secretary and Treasurer of the International Executive Board of the UAW-CIO was, in general, a policy of adhering to the union no-strike pledge. The officials of Local 212 were advised in this telegram dated May 4, 1944, that they should abide by the no-strike pledge; that the members should be instructed to continue their normal work but not to assume any of the functions normally undertaken by the foremen.

It was the contention of President Jesse Ferraza of Local 212 of the UAW-CIO that this local, its officials, stewards and membership had substantially conformed to the international policy.

It was the contention of the company, however, (such contention being backed by a comprehensive written recital of specific incidents occurring in its plants during the foremen's strike and being further supported by very emphatic statements of Colonel Strong of the Central Pro-

curement District of the U. S. Army who had personally observed conditions existing in the plants) that Local 212, its officials and membership had given the international policy lip service only; that in fact they had made no real or serious effort to cooperate; that although the membership may have been instructed to report for work the production at the plants throughout the period of the labor dispute was, aside from the natural loss to be expected because of lack of supervision, cut [illegible] more deeply by failure of the hourly rated workers to perform their duties in other than a lackadaisical manner. Colonel Strong characterized the actions of the workers as "disgraceful." He had personally witnessed workers deliberately sitting around doing nothing or even singing or dancing during working hours. From personal observation he was convinced that many of the committeemen and many of the stewards had definitely encouraged participation by the rank and file. He stated that, prior to the closing of the Outer Drive Plant, union committeemen had instructed their men not to go through the picket line.

The company's summarized statement of incidents occurring during the foremen's strike charges that foremen who did show up for work at the Mack Plant at various times were booed and taunted by the employees and forced to leave the plant; that the workers hammered on benches and created general pandemonium which plant committeemen made no attempt to control; that certain departments refused to take orders from foremen; that the men stopped work on numerous occasions because foremen appeared on the job; that they purposely did little work; that in some instances they hid fixtures and stock; that the workers refused on numerous occasions even to take orders from superintendents who were not implicated in the foremen's strike and that because of their non-cooperation, production fell off 50% to 60%.

The company submitted a similar bill of particulars as to conditions existing in the Hamtramck and Outer Drive Plants. In the Hamtramck Plant the general attitude of the employees during the strike was characterized as one

of insolence and general disregard of company rules; loafing was general; card and crap games were indulged in during working hours and any foremen appearing for work were booed, hissed and shouted at.

At the Outer Drive Plant it was alleged workers slept behind bins, read newspapers and made such a noise that the plant superintendent, Mr. Winstanley, and Captain Korn, Army representative, personally had to plead with the workers to stop, but to no avail. It was charged that in this plant clock cards were rung in and out indiscriminately by workers. Booing, hissing and pounding prevailed as it did in the other plants. On May 16 the hourly rated employees refused to enter the plant through the picket line of foremen as above related. When this condition continued to persist on May 17, the plant was ordered closed by the company on direction of General Johnson and Colonel Strong of the Central Procurement Districts.

The above-entitled claimant, Joseph P. Baker, together with the additional claimants whose names appeared on the attached list or lists marked Class "B" are hourly rated workers employed by the Briggs Manufacturing Company in the Mack, Hamtramck or Outer Drive Plants whose unemployment during the interval of May 16 through May 21, 1944, was caused by the circumstances related above.

Reasons: From the above facts it appears that the unemployment of the hourly rated workers in the Briggs Manufacturing Company, Mack, Hamtramck and Outer Drive Plants from May 16, 1944, through May 21, 1944, was due to a stoppage of work existing because of a labor dispute in the establishment in which they were last employed. Further, the facts above outlined establish participation of the hourly rated workers and members of Local 212 of the UAW-CIO so general as to amount to a slow down or strike in sympathy with the members of the F. A. A. It was because of such slow down and the consequent loss in production and also in consequence of the action of the union membership in refusing to pass the

foremen's picket lines on May 16, 1944, at the Outer Drive Plant that the company at the direction of the Army and Navy Procurement officials was forced to close these plants. Under all of the circumstances the practical effect of the actions of the hourly rated workers was the adoption of and participation in the foremen's strike. It therefore follows that the hourly rated workers individually and/or as members of Local 212 of the UAW-CIO were directly involved in such labor dispute within the meaning of Section 29 (c) of the Act.

Decision: In accordance with the facts and reasons above set forth, It Is Determined that the above-entitled claimant, Joseph P. Baker, together with the additional claimants set forth in the attached list or lists marked Class "B" are disqualified for unemployment compensation benefits under Section 29 (c) of the Unemployment Compensation Act for the interval from May 16, 1944, through May 21, 1944.

Employer and employees notified of determination by State Office. 744C's issued.

A. W. BROWN
State Office Claims Examiner

Company's Exhibit No. 47-A

COMPANY'S EXHIBIT NO. 47-A.

(Rejected.)

Copy of determination that was mailed to individual claimants.

Notice of Determination

In reply, please refer to
CL-ADJ9
Subject: SS#

Dear Claimant:

Your claim for unemployment compensation benefits has been investigated with respect to your unemployment during the interval of May 16 to May 22, 1944.

On the basis of the facts obtained, it appears that your unemployment during the above-described interval was due to a labor dispute existing in the establishment in which you were last employed, i. e., one of the following plants of the Briggs Manufacturing Company of Detroit; the Mack Avenue Plant, Hamtramck Plant or Outer Drive Plant. It further appears that you were directly involved or interested in this labor dispute under one or more of the provisions of Section 29 (c) of the Michigan Unemployment Compensation Act.

In accordance with the above findings of fact, it is determined that you are disqualified for unemployment compensation benefits under the provisions of Section 29 (c) of the Michigan Unemployment Compensation Act (relating to unemployment caused by a stoppage of work existing because of a labor dispute) for the above-described interval, i. e., from May 16 through May 21, 1944.

If you do not agree with this determination you may file an appeal to a referee within fifteen days from the date of receipt of this letter of notification.

Very truly yours,

A. W. BROWN
Labor Dispute Desk
Claims Adjustment Section

cc: Briggs Mfg. Co.
CB-12-g44

COMPANY'S EXHIBIT NO. 49-A.

FOREMAN'S ASSOCIATION OF AMERICA

"The Voice of Organized Foremen"

Leadership (Cut of F. A. of America) Fidelity

First Radio Broadcast

—By—

President of Foreman's Association of America

Robert H. Keys

February 24th, 1943

Over Station CKLW

National Offices
515 Barlum Tower
Detroit, Mich.

Robert H. Keys	William Fisher	Harold M. Kelly
President	Secretary-Treasurer	Membership Director

February 24th Broadcast

Mr. Keys:

Good evening, ladies and gentlemen. We are using radio because we want to do all we can—to help in the production of war materials. We do not speak, for management. We do not speak, for labor. We speak only, as foremen—who believe that the most vital problem facing our country at this moment—is the urgent necessity for an immediate and continued increase in our output of war products. But—that is a big order—and such a complex problem that conscientious officials in Government, industry, and labor—are wrestling with it day and night. Our 1942 production of armaments was excellent—as proven by the factual data given by President Roosevelt in his address at the opening session of Congress. But Presi-

dent Roosevelt—and Mr. Donald Nelson—and other public officials assert that we must do much better in 1943—for we not only have a huge and ever-growing army of our own to equip and maintain on many world battlefronts—but—as the Arsenal of Democracy—we have promised ever-increasing material aid to our Allies. So far we have helped Great Britain and Russia tremendously—but our inability to give anywhere near comparable help to China can be attributed mainly to the fact that our 1942 production was not sufficient to spread around. The situation in China since the closing of the Burma Road is desperate—and we can hardly afford to be complacent about it. Besides, there have been ominous rumblings of late that China may collapse from the strain. Even if China endures until we begin shipping adequate supplies—the delay does us no good, no matter how you look at it. And the longer China is kept out on a limb, the longer this war will continue. The President and other officials know, however, that our 1943 manufacturing objective—is a gigantic undertaking—the toughest assignment ever tackled in our history, and we foremen, who are doing our daily task of supervising the productive activities of employees in war industries—are acutely conscious of the manifold difficulties that must be overcome in order to realize the projected schedules.

It seems to us that the approach to, and study of, this problem of greater production has been confusing, and continues to ignore the biggest single factor—the one factor that would definitely assure us of success. During 1942 and up to date—newspapers, magazines and radio have given publicity to a number of production obstacles that have bobbed up. Those most frequently mentioned, are: Government red tape, absenteeism, inefficient scheduling and layout of work, strikes, real and wildcat variety, shortage of skilled help, slow-downs; the labor market and poor morale. Each of these do exist in some degree, we admit that, but their relative effect on volume of goods manufactured—has been magnified out of all proportion. You can always find exceptions to anything—an outstanding case here and there—where one or more of these things

impede progress, and may be the primary barrier to accelerated production schedules—which would seem to indicate that they are the production bottlenecks. We are not discussing isolated examples, however—but rather the important overall picture. We emphatically claim that these red herrings on the production trail—have a tendency to obscure the deeply entrenched hurdles, which may defeat our plans to step up production.

For instance, take the matter of poor morale. What regenerative medicines are utilized by plant managements to cure it? Here are the cure-alls—posters, slogans, rallies, profusely illustrated house organs—inspirational pamphlets and motion pictures, and plant visits by war heroes. Such corrective hypodermics are powerful medicine—but are they effective in a plant with a real case of bad morale? For a few days after their use, there is a noticeable and beneficial reaction—and then the same malady comes right back to plague the management. Why? Because the manifested result of bad morale has been treated—the underlying cause has not been properly diagnosed and treated. It reminds us of the man suffering from recurrent headaches—who discovers that sodium bicarbonate gives temporary relief. He quickly forms the harmful habit of reaching for the soda when each headache hits him—neglects to consult a physician to learn the cause of nature's warning—and winds up with a fatal ailment that could have been avoided.

We are not on the air to spout platitudes or destructive criticism—but to offer constructive criticism and suggestions. We cannot disregard the facts, or gloss them over, or minimize the danger, if we are to help increase production. We have but one axe to grind—and that is to try to raise the American production up where it should be. Our motives will likely be misunderstood—but that is a price we are willing to pay if we can achieve even a small measure of success.

Tanks, planes, guns, shells, and many other war products. Yes, we foremen help to make them. As foremen we are familiar with the production lines, the machines—

the materials on the job, the men and the women under our supervision. We live our daily lives in the hum and the hustle, in the very heart of the problem. All of us were workmen before we were promoted to the responsibility of foremanship. Many of us are still workmen and foremen combined. We are the middlemen, the connecting link between top management and labor. We too have our shortcomings, and are just as human as those working above or below us. We don't own or operate these companies, and it is our job to carry out the instructions given us by top management. In so doing we simply reflect the true policy of top management. Necessarily, we get to know both top management and labor—their aims, their efficiency, and their character. Isn't it reasonable to conclude therefore—that we foremen are pretty well posted on what is going on where we earn our living? Because of our unique position in the set-up—we feel that we are qualified to properly evaluate cause and effect, and propose corrective measures. Constructive criticism is a touchy weapon that can only be used when one knows what is wrong—and is willing to offer sound and proven solutions.

Our 1943 production must be increased in accordance with Government schedules—or this war is bound to drag out disastrously. Each day that this terrible conflict continues—means the loss of more lives, precious lives, of grand young Americans who didn't ask for this cross. And what of the tragedy now being visited each hour upon parents, and wives, and children, and all dear to our front line defenders? Can futile words ever describe the heartaches, or can anything material ever compensate them? These considerations are of utmost importance—far more so than tax burdens, or the puny sacrifices which we at home may be called upon to make.

We categorically state that our essential manufacturing goals—will not be reached unless and until, Industry and Labor explore the whole program realistically. As matters stand today, there is entirely too much friction between management and labor. This situation has gone so

far, that top management alone cannot get the production increase—foremen alone cannot get it—labor alone cannot get it. But the combined and genuinely sincere cooperative efforts of all three can accomplish it. We believe that. If, however, any one of these three controlling factors is overlooked in any attempt to step up production—then inevitably, the program will bog down.

We foremen are determined to refrain from mud slinging at either top management or labor. We refuse to be drawn into a maelstrom of dispute regarding who is to blame or why. We do want the friendship of both management and labor. We do know that a serious barrier to greater production does exist—and we are intensely anxious to help correct it at once for our common good. We too want to win this war in the shortest possible time—and realize that this can only be accomplished by faster and faster production of war materials.

In such a crucial emergency, surely we can get together like true Americans. Surely, we, on the home manufacturing front—are willing to prove by our actions that we are 100% behind the boys on the firing line. Our ambition should be to merit their respect and confidence. Time is flying. The barnacles must be scraped off the bottom of the industrial ship right now—not next summer, not next fall.

COMPANY'S EXHIBIT NO. 49-B.

March 3, 1943, Broadcast

Mr. Keys:

Good evening, ladies and gentlemen. We are using Radio, because we want to do all we can to help in the production of war materials. We do not speak for management. We do not speak for labor. We speak only as foremen, who believe that the most vital problem facing our country at this moment is the urgent necessity for an immediate and continued increase in our output of war products.

Tanks, planes, guns, shells, and many other war products. Yes, we foremen help make them. As foremen, we are familiar with the production lines, the machines, the materials on the job, the men and the women under our supervision. We live our daily lives in the hum and the hustle, in the very heart of the problem. All of us were workmen before we were promoted to the responsibility of foremanship. Many of us are still workmen and foremen combined. We are the middlemen, the connecting link between top management and labor. We too have our shortcomings and are just as human as those working above or below us. We don't own or operate these companies, and it is our job to carry out the instructions given us by top management. In so doing we simply reflect the true policy of top management. Necessarily, we get to know both top management and labor, their aims, their efficiency and their character. Isn't it reasonable to conclude therefore, that we foremen are pretty well posted on what is going on where we earn our living? Because of our unique position in the set-up, we feel that we are qualified to properly evaluate cause and effect and propose corrective measures.

Now take this much-discussed subject of absenteeism. Just how bad is it? On February 15th, 1942, Donald M. Nelson, chairman of the War Production Board, said, "Absenteeism is running at the inordinately high rate

of eight to ten percent in Detroit war plants." After his blast Mayor Jeffries immediately conferred with plant managements, labor leaders and members of the War Labor Board. On February 18th, Mayor Jeffries said, "Nelson says absenteeism is eight to ten percent, and the management of war plants says it is four to six percent, and labor says it is a lot of hooey. There is a good deal of confusion and controversy over the matter." Whom are we to believe? Donald Nelson's estimate of eight to ten percent? Management's statement of from four to six percent or labor's statement that it is a lot of hooey? We foremen frankly admit that we don't know the actual percentage of absenteeism in Detroit plants and we don't think anyone else does either. From first-hand observation we do know that unnecessary absenteeism does exist to some extent.

While we cannot condone it, yet we are convinced that, considered by itself, the effect of absenteeism on the crucial problem of speeding up production has been exaggerated. In normal times you can expect an absentee rate of from two to three percent, caused by such unavoidable happenings as accidents, illness, extreme weather conditions and so forth. If war plant managements are accurate in their four to six percent calculations * * * then, how can an additional one to three percent absenteeism wreck the whole program of faster manufacture of war products?

All sorts of reasons have been advanced by the press and magazines regarding the causes of excess absenteeism. Besides illness and accidents, the most frequently mentioned are poor transportation facilities, family worries, indifference, inadequate housing, liquor hangovers, poor sanitation, too much money to spend, lack of recreational facilities and too many working hours per week over an extended period. We agree that you can always find workers absent due to one or more of these reasons, but we want to make our stand clear. It is simply that many of these apparent reasons have their roots in another little mentioned factor, which is really the big reason as we shall point out.

There has been a hodgepodge of remedies proposed to

cure the evil. Donald Nelson has suggested that all boards of commerce, local and international unions, civic clubs and public officials devote their ideas and energies to lessen it. Mrs. Franklin D. Roosevelt has proposed that some foremen and workmen be sent to the battlefronts so they could watch their products in action, and then report back to their fellow workmen what they saw. Others in public life have suggested that absentees be threatened with being drafted into the Armed Services under a "work or fight" edict.

Based upon our day to day observations and contacts, we foremen do not believe that any of these correctives will work or if adopted that they will have the desired effect of increasing production. Everyone attacks the visible results and reasons for absenteeism rather than its true underlying cause. We claim that abnormal absenteeism is found to exist only on direct proportion to the degree of lack of cooperation that is present between top management and labor in any plant. If that statement is pooh-poohed then we should like to have the pooh-poohers give us a logical explanation of why one plant has a very low absentee rate of around two to three percent while another plant with approximately the same number of employees and located in the same area, will show a much higher absentee rate. Are the men and women workers in the plant with the good record, considered individually, more patriotic, more energetic, or more conscientious than the workmen in the other plant? Definitely, they are not. But this mysterious difference in the control of absenteeism can easily be traced when you critically compare relations between management and labor in the two plants. In the one you will find top management, foremen and labor highly cooperative with each other, while the opposite is true in the plant with the poor absentee record. Let's not delude ourselves. Wherever harmful friction is found between management and labor it communicates itself to the rank and file, and has a very bad effect on the morale and "will-to-do" of many of them. We therefore don't hesitate to go on record that bitter differences, sometimes hidden, between top

management and labor is the biggest single cause of absenteeism. Stop that internal tug-of-war, ladies and gentlemen, and the plague will largely disappear overnight.

Our 1943 production simply must be increased somehow or this war will drag out disastrously. Each day that this terrible conflict continues means the loss of more lives, precious lives, of grand young Americans who are depending on us to give them weapons of war in time and on time. And how about the suffering that is being visited each day and hour upon loving parents and wives and children and others on our home front? Can anything material ever compensate them when they lose one dear to them on a far distant battlefield? Are not these considerations of utmost importance—far more so than tax burdens or rationing or any other puny sacrifices we may be called upon to make?

We are not on the air to spout empty words, but rather to offer constructive criticism and practical suggestions. We cannot disregard the facts or gloss them over to minimize our acute danger if we hope to be of any assistance in the increased production program. We have but one axe to grind and that is to try to raise America's production up where it should be. Our motives will likely be misunderstood but that is a price we are glad to pay if we can achieve even a small measure of success.

If there are plants where absenteeism is hindering and interfering with the program of stepping up production schedules we offer the following horse-sense remedy. Form a greater production committee of nine men—three from top management—three from the ranks of foremen—and three from labor. The three from top management, however, must include the president, the plant manager, and some other official having genuine authority. There are two glaring weaknesses in most so-called labor management committees as constituted today—one is that the appointed representatives of management are mere figureheads, chosen from subordinate positions, and lacking even pretense of any true delegated authority—the other fallacy is that foremen are either left off the committees or are

Company's Exhibit No. 49-B

given but meager recognition. Unless both top management and labor are willing to include foremen on an equitable basis they are leaving out the vital connecting link between top management and labor and thereby jeopardizing the anticipated results.

Merely forming such a committee will inevitably be so much window-dressing, even if they meet daily, unless its members are actuated by a genuine desire to make any possible sacrifice in order to accelerate production of that plant. At the very first meeting, therefore, let each committee member sign the following statement of principles, and let each man retain a signed copy, and in addition have copies distributed to every employee in the plant. Here is the creed:

> "We, the undersigned, do hereby solemnly pledge on our honor as men and as American citizens enjoying equal rights under our Flag, that we will examine our particular problem in all frankness and fairness, and cooperate one with the other and as a group in order to eliminate anything whatsoever that stands in the way of speeding up production. We do further promise not to use these meetings as a wedge to gain unfair advantages. We further pledge ourselves to make whatever moves are necessary to achieve increased production, realizing that if we have to forego certain privileges for the duration, that such sacrifices will be puny by comparison with the sacrifices being made by those who are giving their all in order that we may continue to preserve our way of life as we have known it in these beloved United States."

We foremen believe that real men, sincere patriots, can surely have no valid objection to getting together in this or some comparable manner. If top management and labor are unwilling to bury the hatchet during this war for our common good, then God help America.

Absenteeism, in our opinion, is only one of several barriers to faster production. Unfortunately our time is limited on these broacasts, but we will discuss absenteeism at greater length in some future program. To our way of

thinking there are more important obstacles to be overcome if we are to increase production—such as Government red tape, inefficient scheduling and layout of work and materials, strikes of both real and wild cat variety, shortage of skilled help, slow downs, and poor morale to mention a few—all of which we will discuss in coming broadcasts. The response to our first broadcast was encouraging and enlightening. Please continue to give us your opinions and comments, for such information can be a big help in our crusade to increase the output of war products.

COMPANY'S EXHIBIT NO. 49-C.

March 10th, Broadcast

Mr. Keys:

Good evening, ladies and gentlemen. Last week we discussed absenteeism. Tonight let us consider poor morale, the father of absenteeism. Most of the difficulty now being experienced by government and industry in their endeavor to increase production can be laid at the door of that slippery and troublesome obstacle, poor morale. It is indisputably true that when a war worker is in a bad mental state, no matter what the cause, he cannot do his best work; he lacks interest in his job; he may become a frequent and unnecessary absentee; he may even forget that he has relatives and friends in the Armed Forces; and, consciously or otherwise, he breeds discontent among his fellow workers.

Company's Exhibit No. 49-C

Now what are some of the many causes of this serious industrial disease called poor morale? Here are a few: Inadequate pay, too much whoopee; fear that he will be laid off if he over-produces, disbelief in the country's need for faster production, improper leadership on the part of top management or labor unions or both, unpleasant working conditions, poor transportation facilities, shack housing, and harmful friction between top management and labor. And of all these causes we categorically state that the number one cause, the one that packs the wallop to greater production in any plant, is harmful friction between top management and labor. This condition is not the fault of the worker. There is nothing wrong with the average American working man. His heart is in the right place. But he is the little guy in the middle torn between two opposing forces and groups of leaders, and any resultant poor morale can hardly be blamed on him. If that unfortunate friction can somehow be patched up, ladies and gentlemen, then ninety percent of all other causes of bad morale can be eradicated, and the production of much-needed war products can be accelerated far beyond our 1943 projected schedules.

Poor morale and absenteeism are bad partners, and are not so mysterious or hard to understand when facts are faced squarely. We challenge anyone in America to show us one plant where absenteeism is excessively high but morale is good, or where morale is poor but absenteeism is normal.

Last Saturday, March 6th, Alvan Macauley, president of the Automotive Council for War Production, announced the establishment of a manpower utilization division to seek a solution on an industry-wide basis to the problems related to absenteeism, employment turnover and worker morale. And C. E. Wilson, president of General Motors, was named chairman of a special eighteen-man committee of top-ranking automotive executives, formed to explore the problems and find the solution. We foremen are glad to learn that this committee has been appointed, for it is a start in the right direction. But the history of similar committees is such that we doubt they will discover a

workable solution, simply because its membership does not include an equal number of leaders of foremen and leaders of labor. In last Wednesday night's broadcast we said, "We foremen claim that absenteeism is found to exist only in direct proportion to the degree of lack of cooperation that is present between top management and labor in any plant. If that statement is pooh-poohed then let the pooh-poohers give us a logical explanation of why one plant has a very low absentee rate of around two to three percent while another plant will show a much higher absentee record." By an understandable coincidence, Mr. Macauley stated in his interview with the press on the following Saturday that his committee will study why absenteeism amounts to ten percent at one plant and only three percent at another.

Why all this hullabaloo about absenteeism? Why do labor leaders and plant executives both continue to studiously ignore its real cause? Why do labor leaders and management speak in broad terms of cooperation between labor and management, yet fail utterly to make a determined effort to get that cooperation, or at least to eliminate those barriers to greater production over which they have control?

Why does top management persist in making futile attempts to erase the effects of poor morale rather than its underlying cause? Why do they continue to utilize such correctives as rallies, slogans, posters, inspirational pamphlets and motion pictures, when the results are negligible? Even a personal visit to a war plant of some grand young American war hero cannot and does not have lasting effect where poor morale exists. We foremen are convinced that the reason why top management and labor leaders deal only with the visible results of poor morale, is that there is a feud going on between them in many plants. We emphatically state that our 1943 production cannot be stepped up satisfactorily unless this harmful friction ends right now.

We foremen are a vital cog in the production of all war materials. We earn our livelihood on the production lines. We relay the orders of top management, accept the re-

sponsibility for departmental output, and act as "go-between" for top management and labor. We get both sides of the picture day in and day out, and are, therefore, in a position to know what is going on where we work. To get higher production, this hazard of harmful friction between management and labor must be moved off the production road.

While we cannot "soft-pedal" the situation if we are to be of assistance in the problem of increasing output, yet we refuse to take sides in the controversy between management and labor or to throw mud at either. We have but one axe to grind and that is to try to assist them in raising America's war production up where it should be. We know that harmful friction exists and are making the earnest appeal to both parties to bury their differences for our common good. Last week we offered a sound remedy. Tonight we repeat it.

Let each plant form a greater production committee of nine men—three from top management, three from the ranks of foremen, and three from labor. The three from top management must include the president, the plant manager and some other official having genuine authority. There are two well-known weak spots in most so-called labor-management committees as constituted today. One is that the chosen representatives of management are mere figureheads, picked from subordinate positions, and who cannot even pretend to make any decisions on corporate policies. The other weakness is that foremen are either left off the committees entirely or are given but meager recognition. Unless both management and labor are willing to include foremen on an equitable basis they are jeopardizing the anticipated results. The nine man committee we suggest will fail in its purpose, however, unless its members are actuated by a genuine desire to step up production at any possible cost. Each appointee, therefore, should be willing to prove that he is sincere by signing the following statement of principles, a copy of which should be given to every employee in the whole plant. Here is the creed: "We, the undersigned, do hereby solemnly pledge on our honor as men and as American

citizens enjoying equal rights under our Flag, that we will examine our particular problem in all frankness and fairness, and cooperate one with the other and as a group, in order to eliminate anything whatsoever that stands in the way of speeding up production. We do further promise not to use these meetings as a wedge to gain unfair advantages. We further pledge ourselves to make whatever moves are necessary to achieve increased production, realizing that if we have to forego certain privileges for the duration, that such sacrifices will be puny by comparison with the sacrifices being made by those who are giving their all in order that we may continue to preserve our way of life as we have known it in these beloved United States."

We foremen see no reason why red-blooded Americans should object to collaborating in this or some comparable manner. Why fritter away precious time in cooking up a lot of window-dressing alibis and reasons to explain why it is so tough to increase production when a horse-sense solution is being offered. The boys on the firing line are not permitted the privilege of endless discussions about when and where they attack. We foremen don't control or operate these companies, but if we did we are certain we could prove within thirty days that we know what we are talking about.

Company's Exhibit No. 49-D

COMPANY'S EXHIBIT NO. 49-D.

March 17th Broadcast.

Mr. Keys:

Good evening, ladies and gentlemen. Tonight let us consider the key man of industry, the foreman. He is a highly important factor—if not the most important—in this strenuous campaign which our Government is waging to increase the production of war materials.

Washington officials suddenly woke up to the fact that the supply of foremen was a priceless national asset. There simply were not enough experienced supervisors to meet the tremendous demands of all-out war production. As a consequence, the War Production Board rushed its representatives to industrial areas in order to sell management on the necessity for training them. In the emergency the Board whipped up some educational courses, employed instructors, and offered manufacturers government-conducted training programs free of charge. This intensive drive to provide an adequate supply of competent foremen is conclusive evidence that good foremanship, and plenty of it, was needed in a hurry. This move also shows that the War Production Board is keenly aware of the vital role that foremen play in industry.

This is not surprising when you consider that a good foreman must not only know how to work with tools and machinery, but also how to handle various personalities, he could hardly function efficiently unless he had first mastered the technical features of his job. But the human problem is far more complicated to handle than any production problem. There are many men with brilliant mechanical minds who fail because they don't understand how to work with people and haven't the ability to get workers to put out for them.

Now we foremen are eager and anxious to do our part in stepping up the tempo of production of tanks, and

planes, and guns, and other sorely-needed war products. We have been, and are, cheerfully co-operating with every effort of our employers and the Government to improve our technique in the handling of men, equipment and materials. But we emphatically state, that it is a waste of time, energy and money, to train foremen how to properly supervise workers in any plant where a condition is found that makes it almost impossible for them to use their abilities to the best advantage. In our broadcast of February 24th we said, "We don't own or operate these companies and it is our job to carry out the instructions of top management. In so doing we simply reflect the true policy of top management." After all, we foremen are the "go-between" of top management and labor. If our management is embroiled in harmful friction with labor leaders, then we, the middlemen, get caught in the jaws of this destructive vise. Under such adverse conditions, we are frequently asked to do things that destroy the goodwill and respect of the men and women working for us. As a result, we are powerless to create and maintain good morale, or control absenteeism or correct numerous difficulties that hamper our efforts to speed up the output of war materials. This harmful friction that does exist between top management and labor in many plants, ladies and gentlemen, is the most dangerous obstruction to our 1943 production schedule. Unless management and labor adjust their differences and do it very soon, then we have little hope of turning out the quantity of war products that are so necessary this year.

We have pointed out in previous broadcasts that absenteeism, poor morale and most of the other obstacles to better production are the manifested results of an underlying cause, which is management-labor friction. For example—Millions of words have been printed about that hot potato, absenteeism. There have been so many confusing and contradictory statements about it, that the average American would require a microscope to separate the wheat from the chaff. Some of the proposed remedies are amazingly silly. But there was a newspaper item out of Washington

that appeared on March 8th, which, in our opinion, hits the nail on the head, and backs up the conclusions that we have voiced over the air. The article explained that Andrew Higgins, of Higgins Industries; Homer Ferguson, of the Newport News Shipbuilding Company, and Roger Williams, of the North Carolina Shipbuilding Company, were summoned by the Senate's Special Defense Committee to describe for the benefit of some other shipbuilders how to meet production difficulties. The news item further stated, "After questioning three successful shipbuilders on methods of obtaining speedy production, a Senate investigating committee suggested today that the solution to absenteeism and labor problems is management leadership. The three executives asserted, in effect, that they had no such problems. 'It seems to be,' observed Senator Mead, 'that probably we're putting too much stress on these difficulties. Maybe we ought to go deeper into the lack of leadership ability of which you three have a large supply.'"

There you have it! Where leadership is good, production can be constantly increased, because everybody from the president down co-operates wholeheartedly and hits the ball. And the foreman can go to town in any such set-up, because there are no extraordinary hurdles that prevent him from getting out the production needed for victory. But wherever top leadership is bad, the foreman is automatically in a tough spot. Instead of production being stepped up it bogs down, and cannot gain momentum.

Many public officials have accused the war workers of all sorts of production troubles, and have even proposed harsh penalties as a solution. We foremen emphatically state that the worker is not to blame at all. When leadership is poor in any plant he is merely the reflection of a bad situation over which he has no control. No man or woman can work with enthusiasm in a trouble-laden and discouraging atmosphere. Tonight we gave you one of several proofs of that statement when we quoted the findings of the Senate committee investigating absenteeism

and labor problems. Certainly it was established by that investigation that the men and women in those huge shipbuilding companies are giving all they've got. Why? Because they are human beings. They react favorably when treated fairly and are given a chance to prove their mettle. There is nothing whatever wrong with the heart-beat of the average American working man. He is more than willing to do his share. Doesn't it strike you as strange that many public officials jump the little guy, but rarely question whether bad leadership might be at the bottom of our trouble in trying to boost production? Besides, have you ever heard any accuser of the American working man tell us why absenteeism, for instance, averages about three percent in one plant while right next door in another plant it may run as high as ten percent? They should explain that mystery before they start throwing stones at the laboring man and woman. This wide diffierential in absenteeism is no mystery to us, and apparently it wasn't any mystery to the Senate committee.

We foremen advocate the immediate formation of a real production committee of nine men in each plant where they are having trouble in speeding up. To get desired results the committee must have genuine authority. It should consist of the three chief executives, three from the ranks of foremen, and three from labor. Before starting the first conference each representative should sign a statement of principles that will serve as a guide for their deliberations—something comparable to the creed that we suggested in last week's program. Then, and then only, will the barriers to gerater production disappear.

We have but one axe to grind and that is to do all in our power to try to assist management and labor in raising America's war production up where it should be. We are not attempting to pin the blame on management alone, for labor leaders also qualify under the definition of leadership. And we do class harmful friction between management and labor as bad leadership. We foremen are anxious to help in any way we can to end this friction at

once. That is why we are using radio in an urgent appeal to both top management and labor leaders to shelve your arguments and bickering and join hands for the sake of all America right now. There is no time to lose. The fathers, and mothers, and wives and children and sweethearts of our wonderful American boys will be forever grateful to you leaders of industry and labor if you will back them up. And now, I wish to introduce Mr. Harold M. Kelly, our National Membership Director, who has some interesting facts for you. Mr. Kelly.

COMPANY'S EXHIBIT NO. 49-E.

March 24th Broadcast

Mr. Keys—13 minutes—15 seconds

Good evening, ladies and gentlemen. For the past several weeks we have engaged the facilities of this Radio Station in an earnest endeavor to help in the solution of the most vital problem facing our Nation—the absolute necessity of stepping up the output of war materials at once. We have analyzed the causes of absenteeism, poor morale, and other obstacles which hamper Government and industry in their efforts to speed up production. And we have proposed logical and sound remedies based on our own knowledge of the problems and our daily contacts. We had hoped to continue this series of constructive talks without interruption, but unfortunately a situation has arisen which compels us to deviate on this occasion.

Last Thursday, March 18th, C. E. Wilson, president of

General Motors, filed a protest with four committees of the House of Representatives in Washington. The protest stated in part, "The National Labor Relations Board has served us with a copy of a petition of the Foreman's Association of America for certification as the exclusive bargaining agent for all foremen employed by General Motors Corporation, Detroit Diesel Engine Division, under the rank of those formulating policies and giving advice." The wording of the petition clearly shows that our association excludes from membership those foremen who are really officials or officers of a company by virtue of their authority to formulate policies and give advice. We want to impress upon you that the word "Foreman," as used in industry today, has a wide range of meaning. Many executives are termed "foremen" when they should be called "divisional superintendents" or some other appropriate title. We agree—and prove it by our petition itself—that such executive foremen have no right to belong to our organization because they are a part of top management inasmuch as they do formulate company policies.

The dictionary defines the meaning of the word employee as follows: "One who works for wages or salary in the service of an employer, as distinguished from an official or an officer." Please note that sharp distinction between "One who works for salary or wages" as distinguished from an official or an officer. We members of the Foreman's Association of America are employees in the strictest sense of the word, for we are definitely not officers or officials, and do not formulate company policies where we work. True, we act as the "go-between" for top management and labor, but only because the employer himself finds it physically impossible to personally lay out and supervise the work of each machine for the day. So he delegates us to carry out his orders.

Section two, paragraph three, of the Wagner Act states, "When used in the Act, the term 'employee' shall include any employee." Since we are employees therefore, the National Labor Relations Board is not placing an extraordinary interpretation on the true meaning of the National Labor Relations Act, as claimed by Mr. Wilson. Under

rights of employees, Section seven of the Act states, "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." Section seven establishes crystal-clear authority of the National Labor Relations Board to approve our organization as a union of foremen who are, in fact as well as in name, employees, and as such are eligible to participate in the privileges specified in the Act.

On March 19th, the very next day after Mr. Wilson filed his protest, Representative Howard W. Smith, of Virginia, by a strange coincidence, introduced a bill in the House that would prohibit a foreman from joining any labor union. This sweeping measure is far-reaching in its implications, for it contains other clauses which would virtually make a scrap of paper of the Wagner Act. In addition, it would dispossess Americans of certain priviliges, by nullifying that portion of the Constitution of the United States which plainly guarantees the fundamental liberties of the right of free speech and assembly.

Surely, we foremen who are not officials or officers of corporations have the same Democratic right to belong to an organization of our own choice as our employer has to belong to the National Association of Manufacturers, or the banker has to join the American Bankers Association, or a doctor to his American Medical Society, or an attorney to the Bar Association. Why were these various associations formed? They were formed to safeguard the rights of their members and to promote their individual and collective welfare and advancement through mutual aid and collective strength. Why do you, Mr. Wilson, and you, Representative Smith, presume that our organization of foremen would harm the national war effort any more than the present National Association of Manufacturers?

We did not organize the Foreman's Association of America in August of 1941, because we sought unreasonable advantages or a social club. We did organize it, how-

ever, because we had learned by long years of bitter experience that acting as individuals, we were powerless to correct some unfair policies of our employers, policies which created a well-founded fear of insecurity and were a blow at our self respect. Newspaper editorials and items regarding us have admitted that our growth has been very rapid. This rapidity of expansion from a mere handful of us only eighteen months ago, to well over 13,000 today, is proof positive that there is an acute need for an association to protect our basic rights. We have been "on-the-spot" witnesses to the fact that those working for us had gotten relief from, and redress of, their grievances through united action, while we foremen on the sidelines had become the forgotten men simply because we lacked the effective power of collective bargaining. Our present huge membership is even more remarkable when you realize that the only organizer we have is one of our own foremen. We don't need professional organizers, foremen join voluntarily without the slightest semblance of coercion, for they know than the Foreman's Association of America is their one hope of adjusting grievances of long standing.

The idea of our association was really started, therefore, not by us foremen, but rather by those manufacturers who adopted a short-sighted policy that, in effect refused to recognize that foremen too had the God-given right to expect just and equitable treatment. There are, on the other hand, manufacturers who have been far-sighted in their relations with their foremen and have handled them fairly. And in those companies we could hardly influence their foremen to join our association, because they already have what we are fighting for. They didn't need us.

Mr. Wilson also charged in his protest to the House, "The unionized foremen will follow the policies of, and cooperate with, the large labor unions, independent of whether or not they are formally affiliated with them at the present time." This is an unwarranted assumption that is not borne out by the facts. In the first place it may surprise you to learn that labor unions have demonstrated that they do not want foremen or sub-foremen in their unions. There are many instances on record where they

objected to including men in such categories, and voiced their objections to the National Labor Relations Board. Consequently, the Board agreed to exclude foremen and sub-foremen from rank and file union membership. Besides, whenever a union man is promoted to a supervisory capacity, he is automatically out of the union. Finally, we foremen emphatically state, that even if we were eligible to belong to regular labor unions we are determined to remain just as we started—independent—not affiliated with any other labor union in any way whatsoever.

Mr. Wilson also asserted in his protest to the House, "The dual allegiance which will arise when foremen are unionized will imperil their ability to fulfil their responsibilities to maintain efficiency and discipline of the men under their direction." That, in our opinion, is a figment of imagination, comparable to stating that because a man loves his wife, he cannot love his mother or his son at the same time. The mere fact that a foreman belongs to his own independent organization for the purpose of protecting his rights does not prevent him in any particular from efficiently doing his daily job. After all, the foreman can only protect his rights by fair discussion of his problems with top management. He tried to accomplish this by individual conferences for years, but failed. So he has now turned to group action—the proven method. But his understanding and definition of fair play have not changed in the least from what they were before the advent of the Foreman's Association.

A foreman can still be everything a foreman should be when he is a member of our association. To say otherwise is an insult to his character and intelligence. Let's look at the facts. We have chapters in 25 plants. The foremen in those plants are far better supervisors, and more efficient, since they joined us. Why? Because they now have a sense of security even though they may not have negotiated a bargaining contract to date. There has also been a noticeable and beneficial reaction in those companies, for the morale of all employees has improved and the relations between management and labor have taken a turn for the better. This being true, it follows that should the Smith

Bill be passed and foremen be pushed back to their previous state of hopeless outlook, then you will have a continuance of the present condition about which the whole country is worried, namely, the tough job of increasing production.

We foremen, members of the Foreman's Association of America, have a clean record. We have not used violence or work stoppage as a weapon to gain our ends. We could have. On the contrary we have discouraged such tactics, preferring to settle our problems by intelligent and enlightened discussion with management. We do not believe in attempting to bludgeon our employers into agreements with us.

Our Association is one of the great constructive forces in our war effort, organized to build up, not tear down, to promote labor peace, not war; to act as the mediator between top management and labor, not a fomenter of bad blood; to try its level best to help end the harmful friction, that does exist between top management and labor in many key plants. The War Labor Board is glutted with a maelstrom of unnecessary cases referred to it for decisions, when such differences could have easily been ironed out by management and labor, had each been willing to cooperate.

We have repeatedly stated in these broadcasts that we desire friendly relations with both top management and labor, and that we do not speak for either. We are truly an independent association of free men, banded together in accordance with the laws of our country, and dedicated to the vitally important task of doing everything we can to raise America's production of sorely-needed war materials up where it should be. For that reason, we assure you, ladies and gentlemen, that we will fight this un-American Bill of Representative Smith by every legitimate means and resource at our command.

COMPANY'S EXHIBIT NO. 49-F.

Mr. Keyes: March 31st Broadcast

Good evening ladies and gentlemen. Last week we answered the statements made on March 18th by C. E. Wilson, President of General Motors. His protest, filed with four Congressional Committees in Washington, challenged our right to organize the Foremen's Association of America, and particularly to form chapters in the plants of General Motors. A few hours later Representative Howard W. Smith of Virginia introduced a bill in Congress, which was written for the express purpose of making it unlawful for foremen of any war plant to join our Association. It is a sweeping measure, for it is so worded that it not only denies constitutional rights to foremen in particular, but also hits labor in general below the belt. In discussing this bill tonight, however, we will not try to interpret in detail its devastating effect on the ranks of labor. We speak only for our 14,000 foremen who are now members of the Foreman's Association of America.

Hearings are being held on the Smith Bill before the House Military Affairs Committee, because the preamble states, "A bill to amend the Selective Training and Service Act of 1940, and to provide further for the successful prosecution of the war by prohibiting acts interfering with the full utilization of manpower." From that opening anyone would logically assume that a serious flaw has been discovered in the Selective Service Act, some loophole that endangers our whole war effort. But further reading quickly reveals that the gist of the bill is to prohibit foremen from organizing. Representative Smith, therefore, is wasting the valuable time of an important military committee by forcing its members to consider a bill which should be analyzed by the House Labor Committee. He accomplished this by the tricky method of so wording a labor bill that it actually becomes an amendment to the Selective Service and Training Act.

Company's Exhibit No. 49-F

We have not the time to quote all of the involved clauses and confusing words of the act, but we will boil down its meaning for you. Here are the basic reasons, as set forth in the bill itself, which are supposed to justify Representative Smith for introducing it. The act declares that it is necessary to provide effective utilization of the manpower of the nation in support of the war effort. We heartily agree with that, but the question is whether the proposed bill will achieve its purpose. Reading further we find that it is essential that those charged with the duty of managing and directing the industrial enterprises of the country shall have adequate authority to insure uninterrupted service by those employed in such undertakings and to prevent the useless waste of existing manpower. Here we learn to our surprise that President C. E. Wilson and other executives of General Motors lack adequate authority to operate their plants. This amazing statement is made despite the well known facts that they do exercise, and have been exercising, all of the broad authority, direction and privileges that rightfully belong to the management of any company, such as negotiation of both government and private contracts, purchase of raw and finished materials, manufacture of equipment, setting of wages, salaries and regulation of labor within the scope of mutually acceptable agreements just as they did for several years before the war, control of morale, and finally the declaration of dividends and profits as they see fit.

Does it make sense then to say that the real idea of the act is to restore lost authority? It does not. How can an employer regain something he has never lost?

Continuing our examination of the bill we bump into some eye-opening clauses. A portion of Section 4 reads, "Supervisory employees shall not be eligible to membership in any labor organization engaging in collective bargaining with the contractor, nor shall such contractor be required to engage in collective bargaining with any labor organization, including any of such employees in its membership."

Company's Exhibit No. 49-F

Now, let us find out who is to enforce penalties for any violation of the act. In Section 4 it also states, "Every government contractor shall have authority to take such lawful disciplinary measures within his plant or among his employees as may be necessary to insure maximum efficiency and continuity of operation." That most illuminating rule is a copy of how Hitler regiments slave labor. Everybody realizes that a manufacturer has several workable means of maintaining discipline, but this all-inclusive clause gives him the power of a dictator over each employee. It sets up the employer as the judge and the jury with the right to interpret the broad terms of "maximum efficiency" and "continuity of operation" as he pleases. At his own discretion he can decide whom should be punished and why.

In addition to this dangerous authority, this bill under Section 2 provides a brand new weapon of coercion, for it gives any employer the privilege of reporting to the local Selective Service Board the name of any employee who, in his estimation, should be punished by having his draft deferment cancelled. There you have something to mull over. The employer can put any employee into the army by using his own judgment, and do so without a hearing. Under these conditions, any manufacturer could be misled into punishing even an innocent employee for the satisfaction of someone's personal grudge.

Besides the new and revolutionary concept of how to enforce plant discipline, they use the threat of sentencing a man to the army as if that was some sort of disgrace comparable to a prison term. But that isn't all. Section 7 states, "Any violation of this act shall be punishable by a fine of not more than $1,000.00 or imprisonment for a period of not more than one year, or both, in the discretion of the court." Please bear in mind that these harsh penalties can be imposed on any foreman who may be guilty of the terrible crime of joining the Foreman's Association of America. Since when is it a felony for a man of his own free will to join a truly American organization for the protection of his rights? To be fair

about this thing, why doesn't Representative Smith make it a criminal act for an employer to belong to the National Association of Manufacturers? Mr. Wilson seeks to legislate loyalty into his foremen by the enactment of a tough law which would deny them the same privileges now enjoyed by the rank and file employees. How utterly ridiculous! Loyalty and cooperation cannot be forced on a free man. It stands to reason that General Motors foremen have joined our association because they are convinced that they can only get adjustment of their grievances by united action.

Should the Smith bill become law, the foremen will be prohibited from protecting their rights. It will shove them back to their hopeless outlook of 1941. This will not only make it impossible to increase production, because of the animosity and friction created, but will also have a tendency to bog down the present rate of production.

The Constitution of the United States guarantees the liberty of free speech and assembly. The Smith bill would make a joke of that guarantee. We categorically state that any Congressman who even introduces an unconstitutional bill violates his oath of office.

The Smith Act, ladies and gentlemen, is not only aimed at foremen. It is a clever attempt to use foremen as guinea pigs and an excuse for cracking the Wagner Act wide open for the first time, thereby starting to rob American labor as a whole of its hard-won rights.

You will recall that in previous broadcasts for the past several weeks we have pointed out that we foremen who live our daily lives on the production lines, acting as the go-between for top management and labor, are in position to know what is going on where we work, and for that reason, felt we were qualified to properly evaluate cause and effect. We have made an impartial study of the many confusing theories advanced for absenteeism, poor morale, and other obstacles that hamper both government and industry in their efforts to step up the pro-

duction of war products. We showed quite conclusively that the underlying cause, the greatest single barrier to increasing production, was harmful friction that does exist between top management and labor in many key plants. We earnestly urged, and still do urge, that top management and labor bury the hatchet and cooperate at once for our common good. To bring this about, we suggested the adoption of a "horse-sense" plan. Our plan, given on our radio program of March 10th, is as follows, "Let each plant form a greater production committee of nine men —three from top management, three from the ranks of foremen, and three from labor. The three from top management must include the president, the plant manager and some other official having genuine authority. There are two well-known weak spots in most so-called labor-management committees as constituted today. One is that the chosen representatives of management are mere figureheads, picked from subordinate positions, and who cannot even pretend to make any decisions on corporate policies. The other weakness is that foremen are either left off the committees entirely or are given but meager recognition. Unless both management and labor are willing to include foremen on an equitable basis, they are jeopardizing the anticipated results. The nine-man committee we suggest will fail in its purpose, however, unless its members are actuated by a genuine desire to step up production at any possible cost. Each appointee, therefore, should be willing to prove that he is sincere by signing the following statement of principles, a copy of which should be given to every employee in the whole plant. Here is the creed: 'We, the undersigned, do hereby solemnly pledge on our honor as men and as American citizens enjoying in all frankness and fairness, and cooperate one with the other and as a group in order to eliminate anything whatsoever that stands in the way of speeding up production. We do further promise not to use these meetings as a wedge to gain unfair advantages. We further pledge ourselves to make whatever moves are necessary to achieve increased production, realizing that if we have to forego certain privileges for the duration, that such sacrifices will be puny by comparison with the

sacrifices being made by those who are giving their all in order that we may continue to preserve our way of life as we have known it in these beloved United States.' "

It is unfortunate that we have been compelled to interrupt our regular series of constructive talks which we started because we are intensely anxious to do all we can to help increase the output of much-needed war materials. We too have brothers and sisters and relatives in the armed forces. But the wide publicity given to the statements of C. E. Wilson, and the Smith Bill, compel us to defend ourselves. We have repeatedly stated that we want friendly relations with both top management and labor. We are truly an independent organization of free men dedicated to the very important task of trying to speed up production of armament. We are not affiliated with any labor union, so we are in a position to voice our convictions. Should the Smith Bill be passed, it would virtually wreck our efforts to help our boys on the firing line. For this reason, you can depend upon the Foremen's Association of America to use every legitimate means and resource at its command to defeat this vicious Smith Bill. Thank you.

COMPANY'S EXHIBIT NO. 49-G.

April 7th Broadcast

Mr. Keys:

Good evening, ladies and gentlemen. We have been attending the hearings on the widely-publicized Smith Bill which are being held before the House Military Affairs Committee in Washington. Several big executives were in Washington last week in order to convince the committee that foremen should be prohibited from joining the Foreman's Association of America or any other union. C. E. Wilson, President of General Motors, told the committee that foremen should be legislated against, not only for the benefit of General Motors, but also for the good of the Automobile Manufacturers' Association, because a foreman's union would create a chaotic condition and seriously hinder the war effort. Edward E. Butler, Executive Vice-President of the Vinco Corporation of Detroit, appeared in behalf of the Automotive Tool and Die Manufacturers' Association. Among the many top executives testifying, J. Handley Wright, Executive Vice-President of Associated Industries of Alabama, stated that if foremen are allowed to organize it will lead to destruction of the system of free enterprise and bring about legalized confiscation in this country.

After listening to these fantastic arguments given in testimony against us we are convinced that American industrial leaders have a tremendous imagination. They have no basis of fact with which to verify their contentions so they reach into the grab-bag of supposition. It amazed us to watch them draw highly colored pictures of things that might happen, and at the same time studiously ignore the high principles of our association, the justified reasons for its founding, and our clean record of dealing with top management.

It is difficult for us to analyze their motives and avoid

being accused of mud-slinging. We cannot afford, however, to let the misleading statements of these business giants go unanswered, because they constitute their so-called reasons for trying to put over the Smith Bill.

We will fight to retain the system of free enterprise just as quickly for our employers as we will for ourselves. We too want to exercise personal initiative, because any restraints impair our own liberties. Wherever free enterprise has been shackled or borbidden then both management and labor have lost all, as proven by the present condition of slavery under the despotic governments of Germany and Italy. The manufacturers in those countries are puppets and chattels of the dictators who can and do control them in every way. And the laboring men and women are slaves who are forced to work and live their lives as ordered. When the whip cracks everybody must jump.

Perhaps those executives who testified in Washington last week have a unique version of the true meaning of free enterprise and judge that our interpretation of it is old-fashioned. We define it as a system of doing business which has its origin in the liberty and freedom guaranteed Americans by the Constitution itself. To us it means that we have the right to voice our opinions freely, to enjoy freedom of assembly, to organize as a group for our mutual benefit, and finally to make all these privileges effective in accordance with the written law and the spirit of the law of our country.

Free enterprise does not give us the right to kill our neighbor just because we are permitted to buy a gun and bullets. Nor does it mean unbridled license to exploit us foremen for the satisfaction of selfish ambition and greed. Permitting any plant management to do that is to endorse the false doctrine that business should be conducted by the cruel theory of the survival of the fittest, the dog-eat-dog method. Surely we cannot class unrestrained greed as free enterprise. Such a ruinous philosophy can only lead

to bitter strife and class conflict in any land where men are free. Class conflict is the open door to dictatorship which promises to end chaos but in reality promotes it by robbing men of their freedom. There is a happy medium whereby free enterprise can operate fully on a healthy foundation, yet prevent men from becoming the helpless victims of ruthless exploitation. We have that happy medium in America today, but some people don't want to keep it.

How can free enterprise survive if our system is to be made so one-sided that employers can unite for the protection of their rights, while the same advantage is denied a foreman to join his own association for the same purpose? And yet, ladies and gentlemen, that is the exact situation which certain industrial executives are trying to bring about by legislation in Washington. And they call that the preservation of free enterprise!

When our plant managements did not feel obligated to treat us foremen fairly they automatically abused the privileges of free enterprise. When we went to them for redress, acting as individuals, we could not get it. So we determined to organize an association in accordance with the terms of the Wagner Act to get a square deal. There were only a few of us who decided to do this in August of 1941. Today, just 19 months later, there are over 15,000 of us who are banded together to bargain collectively—the proven way—rather than as individuals—the losing way.

Does it seem reasonable to you that 15,000 foremen would voluntarily choose to gamble their jobs by joining the Foreman's Association of America unless they were convinced that they had just cause for such a move? And our membership is increasing every day.

Let's get down to brass tacks. Our association is absolutely independent, and we have every reason to believe that we can merit and hold the respect of both top management and labor by handling the problems of our own members through practical collective bargaining proce-

dure. Our problems differ from those of the rank and file in many ways. C. E. Wilson of General Motors stated that even if we were independent now, we could not stay that way. Can't we? We aren't children!

We wonder if our employers realize that they are doing Hitler a favor by attacking our right to bargain for a square deal. It is pretty tough to maintain enthusiasm, keep morale high, and try to step up output when we are forcefully reminded that our employers are not interested in our loyalty, because their actions right now in the factories and in Washington speak louder than their words. They seem perfectly willing to refuse us adequate and proportionate pay and fair treatment if they can save a few dollars at our expense on the payroll overhead. Penny wise and pound foolish! We have been given cause to make these harsh statements as a result of their destructive endeavors of the past few weeks in Washington before the House of Representatives Committee.

We devoted our first four broadcasts to a crusade to increase the output of war products. In those radio talks we showed by impartial reasoning and conclusive evidence that the biggest single barrier to stepping up production was the actual existence of harmful friction in many key plants between top management and labor. We offered a sound solution for the problem. We know whereof we speak, for we are the go-between of top management and labor. We see the damaging results of this friction on our production lines every day. We had just completed our fourth broadcast when top management of a few plants decided the time was ripe to hit our association a crippling blow, create new strife and more friction by introducing legislation that would outlaw our organization, and give labor in general a set-back. We didn't ask for the trouble but are compelled to take time out from our series of constructive talks which were designed to help the war effort. Have we promoted or okayed work stoppage? We have not. Have we ever authorized or started one strike? We have not. But we could have! As a matter

of record we have never given any indication of aligning ourselves with any other group in the plants where we work. And yet we are the targets of these manufacturers!

Instead of making an earnest effort to step up production by the sure method of establishing industrial peace, these executives have chosen this particular time to try to throttle our rights under the guise of war emergency. They have gone to Washington to advertise their so-called labor troubles with foremen to the whole country. At the same time they have men in their employ whose job is to promote good morale in their plants among their plant employees. It is a strange and contradictory situation indeed!

We members of our association are employees in the strictest sense of the word. It is our job to carry out the orders of top management so that machines keep turning out war materials in our departments by directing the activities of the men and women who work for us.

Our association is one of the great constructive forces in the war effort: organized to build up morale, not tear it down; to promote labor peace, not harmful friction; to act as a mediator between top management and labor wherever harmful friction exists for any reason; to do our level best to help in any way possible to get rid of everything that stands in the way of reaching our national production goals. We assure you that we will keep right on trying to achieve our objectives.

We emphatically state that should the Smith Bill be passed, then we can all say farewell to free enterprise as we have known it, for its passage will nullify the Wagner Act, the same act which safeguards the privilege of free enterprise for all Americans.

COMPANY'S EXHIBIT NO. 49-H.

April 14 Broadcast

Mr. Keys:

Good evening, ladies and gentlemen. Why make a futile attempt to paint a rosy picture of a piece of canvas that is smeared with dirt and grease? We might as well meet our crisis with courage and be as cheerful as possible. But it will take more than a good frame of mind to win this war. The hour is almost here when our boys will hurl themselves against the Nazi horde on the continent of Europe. It is no secret. We dread the opening of the second front which will cost the lives of huge numbers of grand young Americans who have what it takes to tackle this destructive hell of concentrated firepower. There are millions of us back here who have relatives or friends in the Army and Navy. We cannot avoid the mental anguish of either actual loss by death or the constant anxiety about what is happening to our own. It won't be easy to bear. However, the preservation of that precious thing called our "American way of life" is worth any sacrifice. And after Hitler, what then? Another bitter struggle when we turn to grapple with a more ruthless enemy, the cold-blooded Jap. We have utter confidence in total victory over these two evil forces, but who knows how long it will take to finish the job? Final victory can hardly bring us the same hilarious joy we experienced on Armistice Day twenty-five years ago, because the price we are paying, and will pay, makes the last war seem like child's play.

It isn't pleasant to face such a distressing outlook. In addition, we have an acute problem on our hands—the problem of stepping up production of war materials at once. We are not making the progress we should by any means.

What can be done about it? The drunkard grabs for a bottle to escape reality. Like the drunk, many executives and Labor leaders in key plants grab for temporary relief to escape the realities of bad human relations. Very little

of a constructive nature is being done. There is a wealth of talk but poverty of action.

We Foremen who are really the "go-between" for top management and Labor are well aware of the serious obstacles that block efforts to increase production. Right on the production lines every day we get to know both the attitude of our employers and the rank and file. We see and hear both sides. We are certain, therefore, that we know what is going on where we work.

We are not on the air to spout platitudes or destructive criticism but to offer constructive criticism and suggestions. We can not disregard the facts, or gloss them over, or minimize the danger if we are to help increase production. We have but one axe to grind—and that is to try to raise the American production barometer up where it should be. Our motives will likely be impugned, but that is a price we are willing to pay if we can achieve even a small measure of success.

Since January 1st, there has been an avalanche of statements made regarding the prevalence of absenteeism. It has been widely advertised as the greatest menace to our 1943 production schedule. Leaders of Government, Industry and Labor have all joined in the pastime of rushing into print about causes and cures. One authority gives his views, another ridicules him for having such notions. We Foremen have been amazed by the apparent lack of understanding and careful study of the problem, and we regret that the statements made by some people, who should know better, seem designed to deliberately side-track public opinion and conceal the hidden cause.

For example, here are just a few of the reasons advanced for unnecessary absenteeism—inadequate transportation, ration boards, long work hours, pay day celebrating, weather conditions, disbelief in the necessity for greater production, fatigue, family worries, too much spending money, and lack of recreation. We admit that you could find all of these contributing causes in varying degree in any plant, but we claim they are the outgrowth of a very deep-rooted source that is being given the old

"hush-hush." Without hesitation, we state that the biggest single promoter of excess absenteeism can be traced to harmful friction that does exist between top management and Labor. There is the trunk of the absentee tree! These other so-called factors are merely branches feeding from the trunk.

We are not accusing either top management or Labor of sole responsibility for their damaging feud. On the contrary we earnestly desire the friendship and co-operation of both. The emergency makes us most anxious to help end this unhealthy situation. We think it is about time they get together.

Now let's examine a few of the many so-called remedies offered to curb absenteeism. The most short-sighted one is the asinine threat of drafting absentees into the armed services by passing "Work-or-Fight" legislation. What gets under our skin about this proposed law of coercion is that so many government officials favor it. Since when is it a disgrace or a sentence to be in the Army? Billboards, newspaper and radio all proclaim the advantages of joining this or that branch of the army or navy, yet we have the contradictory spectacle of public officials threatening workers with induction. Another remedy is that a few Foremen and war plant workers should be sent to the battle-fronts to watch their products in action and on their return have them report what they saw. How could this be any more effective than the plant visits made by returned war heroes—fellows who describe what they have seen and been through? Another remedy is that absentees should be hit in the pocketbook as well as through threats of military service. Such a rash law would penalize the innocent for the sins of the few and be hotly resented. Would that raise morale?

We are not defending inexcusable absenteeism. We deplore it. But we do not agree that it can be eliminated by the harsh method of trying to legislate loyalty and co-operation by force of law. We tried that during Prohibition and failed miserably. The one sure way, however, to get rid of absenteeism and other barriers to speeding up

the output of war materials is to establish industrial peace. There is the answer!

Let's call a spade a spade. For the past twenty-five years a new and dangerous philosophy has been gradually taking hold of American business. It is a philosophy that disregards human rights. It tries to substitute and glamorize the creed of rugged individualism or the survival of the fittest. Under its sinister influence the strong grow proud of their ability to crush the weak. If permitted to operate without intelligent restraint it nurses and encourages man's natural tendencies of selfishness and greed.

Now business is organized and conducted primarily to make profits for those who have the vision and the courage to invest their savings. True, it is the very heart of the system of free enterprise. We realize that and are for it. But the profit system can be abused when the leaders of either Industry or Labor forget or ignore their obligation to the common man.

In all too many instances top management and Labor leaders in many of our factories have neglected to pay attention to the Golden Rule, because it clashed with material gain and ambition for power. This neglect is at the bottom of our present difficulty in trying to step up production. It is at the bottom of the harmful friction that exists between top management and Labor leaders in several large plants. It is at the bottom of such things as poor morale and absenteeism.

Laboring folks in this country have been taking it on the chin lately from some super critics. They have been blamed for many things over which they have no control. In the misguided minds of many they are only entitled to exercise the privileges of voting, paying taxes or risking their lives in the armed forces. Their most severe critics have dubbed them as people who want to be paid more and more for doing less and less. Any thinking person who wants to be fair knows that these accusations have no foundation in fact. The working man doesn't have to take off his hat to anybody, or any group by comparison,

when judged by his willingness to carry his share of the load in our war. It is unfair to criticize all Labor because of an occasional short-lived strike here and there. Isn't it more logical to make an important analysis of the odd strike to learn why it started and even more important, to learn why it can be settled in an hour or two after it starts?

History proves that great nations begin to crumble from within when their leaders exchange the Golden Rule for the Golden Calf. Do to others as we would have them do to us is not the crackpot idea of some long-haired dreamer, ladies and gentlemen.

Oh, no! Just the reverse! It is the one philosophy of sane living that can assure us of happiness, prosperity and the retention of the freedom and privileges that we now enjoy in these beloved United States.

COMPANY'S EXHIBIT NO. 49-I.

April 21 Broadcast.

Mr. Keys:

Good evening, Ladies and Gentlemen. All too frequently we pick up our newspaper and read the glaring headlines that inform us of another strike at some war plant. We read further and discover that a few hundred or several thousand men walked off their shift in some vital industry because of what appears to be a trivial reason. The plant executives and union heads give out contradictory state-

ments which don't help a bit for they rarely, if ever, touch upon the background of the case. The big headlines and the comment merely give us the bare news. Seldom do they follow up and accord similar space to an impartial size-up of the underlying cause of the walk-out. If we are not familiar with the complete history of these work stoppages, it is but natural for us to be critical. We may blame the workers and remark, "That's the union for you!" We may question their patriotism, and accuse them of placing their selfish interests ahead of the welfare of the country. We may even join the loud chorus of those who claim that workmen have a lot of nerve to strike when we are at war, and that they should be punished by being drafted into the army at once, regardless of whether they have been deferred on account of dependents or technical skill. Whenever a public official advises the use of the threat of the army draft as a club to force men to remain on their jobs, we question whether he realizes that he is taking a wallop at national morale, for such tactics make army life sound as though it is like being sentenced to prison. Is that a cheerful or encouraging picture for those at home who have sons and relatives in the Armed Forces?

First of all, let us consider just who these strikers are. We find and any thorough investigation will bear us out that they are neighbors, the guys that live in our block or in the neighborhood. The great majority are Americans who pay taxes, buy war bonds, raise families; own property, speak English, drive automobiles, enjoy hot-dogs and hamburgers, and are just as anxious to win this war quickly as anyone else in this country. Many of them are veterans of the first World War, who served this country fearlessly and honorably. How then, can we say there is something wrong or un-American about them, or that their hearts aren't in the right place? They too have everything at stake in this fight for freedom. When we begin to look at it in this way it becomes evident that there must be something radically off key in the industrial picture, something beyond the control of the workers themselves. And yet it may still be difficult for some of

us to understand why representative citizens would stop work when our country is in this desperate emergency.

"Every man to his trade" is an old and true proverb. We foremen would not presume to pass upon the merits of some difference of opinion in the medical profession. We know very little about the practice of medicine, and are not eligible to take sides in such a controversy. But please bear in mind that when we discuss production and management and labor problems we are talking about something with which we are and should be familiar. We are the middleman of industry, the 'go-between' for both top management and labor. We are in a position to know what is going on; to hear all sides of the story; and to properly study causes and effect. We are as close to the problem as anyone else in the country, so we feel qualified to voice our conclusions, based on daily contacts and observation in the many important industries where we work.

The number of employees in a factory has no bearing on strikes, for they happen in large and small plants alike. There are several factories, big and little, that have had no trouble from strikes. There are many others that have had very few disturbances and those were of a minor character. You will find that the workers of any strike-free plant have excellent morale and no record of unnecessary absenteeism to speak of.

If we keep track of the factories that have strikes, we will notice that generally the same plants keep hitting the headlines, because one strike is barely over when there will be a new flare-up. Why this repetition? What amazes us is that companies which are always in hot water with their employees don't seem to profit by the experience of successfully-run plants that have achieved industrial peace. The proven recipe for good management-labor relations is available for those who want it. It isn't a patented secret and there is nothing to prevent trouble-ridden factories from adopting it.

Strikes seriously interfere with production schedules. Time lost cannot be regained. While we deplore strikes,

yet statistics prove that they had very little effect on production last year. Figures released by the War Labor Board show that only six working days were lost due to strikes out of every 10,000 days worked during 1942. So time lost as against time worked is estimated at six one-hundredths of one percent. That's pretty small.

We foremen, therefore, are not so particularly concerned about the results of strikes as we are about what causes them. We emphatically state that harmful friction between top management and labor is at the bottom of these strikes in most instances.

For example, take the recent Consumers Power dispute. William E. Simkin, the arbitrator appointed by the War Labor Board, made the following statement after he had listened to and weighed the evidence. Here are his words, "The company or some of its supervisory officials engaged in a course of action designed to undermine the union, and there was contriving and conniving on both sides which does not represent a real and clear-cut understanding." No comment is necessary.

Last Saturday four hundred foundry workers at the Ford Motor Company were out on strike for four hours and returned to work when they were promised a Monday meeting to explore grievances.

Last fall 2,000 day-shift workers walked out of the Chrysler Corporation's Jefferson Avenue plant in protest over the suspension of seven hundred and fifty others for violation of a 'no-smoking' rule. They were all back at work the next morning.

These are just a few of many short-lived strikes of both real and 'wild-cat' variety that have occurred recently. Most of them were all settled in a few hours, and it is reasonable to conclude, therefore, that they could have been easily avoided.

We don't insist that all strikes are the outgrowth of management-labor friction. We know that some have been exclusively the fault of management and others the fault

of labor. But the great bulk of them are traceable to harmful friction between top management and labor. We are not trying to pin the responsibility on either. We do believe, however, that it is about time that top management and labor leaders in several large key plants bury the hatchet for the duration. Their feud is entirely too costly, because it not only erects a tough barrier on the production road at an inopportune time, but it also endangers our whole system of free enterprise as we have known it. Surely when we are fighting the most disastrous war in our history, both factions should be willing to call off their argument for our common good.

We foremen want to do everything possible to help end this damaging situation that exists in too many of our biggest plants. These companies all have labor-management committees, but they are so much window-dressing and camouflage. We earnestly suggest that these ineffective committees be dissolved and a brand new start be made immediately by forming a real production committee composed of nine men, three from top management, three from the ranks of foremen and three from labor. There is no use getting such a committee together though, unless the president and the plant manager and some other executive with genuine authority make up the group of three from top management. Only these executives could make such a committee a success. And if the foremen are left off or given a minor voice, then the committee would be working under a definite handicap. As proof of the necessity of including foremen in any plans designed to increase production, the War Labor Board has often cited the labor-management committee in the Buffalo plant of the Symington-Gould Corporation as one of the most successful and valuable. There are seventeen members on the committee and five of them are foremen.

The nine man committee we suggest will fail in its purpose, however, unless its members are actuated by a genuine desire to step up production at any possible cost. Each appointee, therefore, should be willing to prove that he is sincere by signing the following statement of prin-

ciples, a copy of which should be retained by each man, and in addition a copy of which should be given to every employee in the whole plant. Here is the creed: "We, the undersigned, do hereby solemnly pledge on our honor as men and as American citizens enjoying equal rights under our flag, that we will examine our particular problem in all frankness and fairness, and cooperate one with the other and as a group, in order to elimiate anything whatsoever that stands in the way of speeding up production. We further promise not to use these meetings as a wedge to gain unfair advantages. We further pledge ourselves to make whatever moves are necessary to achieve increased production, realizing that if we have to forego certain privileges for the duration, that such sacrifices will be puny by comparison with the sacrifices being made by those who are giving their all in order that we may continue to preserve our way of life as we have known it in these beloved United States."

We foremen see no reason why red-blooded Americans should object to collaborating in this or some comparable manner. Why fritter away precious time in cooking up a lot of window-dressing alibis and reasons to explain why it is so tough to increase production when a horse-sense solution is being offered? The boys on the firing line are not permitted the privilege of endless discussions about when and where they attack. We foremen don't control or operate these companies, but if we did we are certain we could prove within thirty days that we know what we are talking about.

America needs more industrialists and more labor leaders whose actions as true patriots speak louder than their words. By their fruits you shall know them.

COMPANY'S EXHIBIT NO. 49-J.

April 28 Broadcast

Mr. Keys:

Good Evening Ladies and Gentlemen: In previous broadcasts we have repeatedly stated that harmful friction does exist between top management and labor in several important key plants. We have tried to show by impartial analysis that this friction is the hidden parent and support of those twin Frankensteins, Absenteeism and Poor Morale, which plague management. Our stand differs radically from opinions expressed by many prominent men. We claim however that they see the results but miss the underlying causes, when, for instance, they state that absenteeism and poor morale are due to such minor contributing factors as inadequate housing, poor transportation facilities, too much spending money, rationing, and so forth. It is our contention that labor-management friction is at the bottom of most industrial ailments and is the basic reason why top management in many large plants is hard put in its strenuous effort to increase production. Heretofore, we have not attempted to explain the "Whys" and "Wherefores" of this unfortunate condition, but we are doing so tonight in response to numerous requests from our radio audience.

We foremen don't own or operate the companies that employ us and we have no say in determining their policies. We don't sit in on the private conferences of either the executives or labor leaders.—Those sessions held behind closed doors where vital courses of action are plotted. But it isn't necessary that we participate in their deliberations in order to learn of any important decisions made, for we are the "go-between" for both top management and labor right on the production lines. Our job puts us in dead center and we know what is going on just as surely as a referee watching two fighters in a boxing bout.

Broadly speaking, there are three kinds of executives and labor leaders in the manufacturing picture—those who

are anxious to cooperate with each other on an intelligent, equitable basis; those who are not willing to cooperate on any basis and make no bones about it; and those who openly profess their willingness to cooperate, but whose actions belie their words. We are only concerned with those not willing to collaborate. First there is the "stub born-mule" type among the leaders of both industry and labor whose minds stopped functioning back in 1937 when unions had their greatest expansion. Neither has forgotten the bitterness of that struggle and, for them, the conflict continues. Secretly they lick their chops in anticipation of the day when the power of one or the other will be smashed beyond recognition. Then there are a very few leaders in both camps who sanctimoniously prattle of their high purpose and desire for industrial harmony, but whose actions prove they are kidding. Kidding themselves is one thing—trying to kid the public is another.

We can sympathize with the manufacturer who is actuated by sincere and admirable motives or fairness, but who has to deal with a labor leader devoid of all principle of equity. His one hope is that the rank and file of the union will get wise to the sinister character of their union head and give him the boot. Thanks to the workability and practicality of democratic processes in unions, this happens sooner or later, for the great bulk of American workingmen are decent, liberty-loving people who cannot stomach dishonest leadership. We can also sympathize with the union leader who wants to be square in his dealings with top management, but who has to contend with an employer whose entire philosophy of labor relations stems from uncontrolled selfishness, greed and prejudice. Men such as these on both sides are the ones who plant the destructive seed which grows into labor-management friction! When both the top executive and the labor leader in any plant lack the desire to give and take then you have an embalmed deadlock.

Ample evidence can be found in industry to verify our assertion that this harmful friction can be overcome. All that is required is that management and labor in any fac-

tory take a realistic look at their difficulties; weigh the cost of their feud in terms of lost time, energy and money; and then show a genuine desire to collaborate. But someone has to make the first move. There is the rub!

The Wagner Labor Relations Act has been called a one-sided, discriminative piece of legislation by many employers. No act that was ever written is perfect. All laws have loopholes. That's why we have lawyers and the courts. If laws could be properly written they would not need interpretation and argument to make them workable. Let's assume that the Wagner Act is full of flaws. Yet in actual practice it has proven definitely beneficial to industry and labor in far more plants than otherwise. We can cite innumerable cases to prove our point. Mr. William Hard wrote an interesting series of factual articles on labor-management problems for the Readers Digest. In the April, 1942 issue he points out how positive cooperation between unions and employers can promote ever-increasing efficiency in production. One part of this particular article states, "The National Association of Die-Casting Workers of the C. I. O. has a contract with the Doehler Die Casting Company of Toledo. It has helped to take that company out of losses into dividends. Its chief official is Edward Cheyfitz. Mr. Cheyfitz is only 28 years old. He went through the University of Michigan to become a professor of mathematics. Then he got a job in the Doehler Company's engineering department. Now he is a union agent with efficiency ideas. In 1938 the Doehler Company was losing money fast. It had three plants and four thousand workers; but as the president of the company, Mr. Charles Pack, says: "The Workers were working against the company." Then Mr. Pack and Mr. Cheyfitz made a bargain. The company would give the union a "union shop". The union, in return, would go all out to improve the company's manufacturing performance. It would try to increase output, and to lower costs. It went half-and-half with the company in hiring a research engineer. It helped to organize research and efficiency committees in the plant. It established a suggestion

system whereby twenty-five per cent of the dollar value of a new idea would go to the worker suggesting it, twenty-five per cent to his fellow workers, and fifty per cent to the company. It sought to prevent waste and increase the production of each man and machine. In three years Mr. Cheyfitz's idea of "industrial democracy" raised wages in the Doehler Company by a total of two million dollars and lifted the company from earning nothing for stockholders to earning more than one million dollars for them in a twelve-month period, even without war contracts. Today, alone with war contracts, the union and the company have a ten-man joint committee empowered to lay aside any shop rules which might impede war production. Mr. Pack says: "I am proud of the union in our plant. It is a main part of our company. I am proud of Eddie Cheyfitz, who is fighting, progressive, constructive labor stateman." Mr. Cheyfitz adds: "I think there will be more unions like ours when there are more managements like Mr. Pack's."

If you were to mail a questionnaire to all employers you would find a number who hold pet convictions or theories which make it difficult to establish and maintain satisfactory labor relations. The most common of these is the fallacy that high wages alone will get results. If this were true then just why do certain plants that pay top wages constantly experience slowdowns, strikes and work stoppages? Another strange belief is that production can be forced by the pressure of efficient planning and the production line itself. There are even some who still think that the working man can be driven by Simon Legree methods, despite proof to the contrary. Others believe that making a profit is their only obligation and operate their plants on that basis. Now profits are necessary. We supervisors believe they are the backbone of free enterprise. But when the profit system is abused to the extent that a manufacturer will grasp profits at the expense of his workers, then such abuse weakens the whole structure of free enterprise.

Among labor leaders you can find a very few who claim

that all employers without exception have ice-water in their veins. This is an asinine viewpoint born of ignorance and prejudice. Such blockheads believe that labor can only progress by the use of goon squads, violence and threats, insults and loud-mouth yappings with no semblance of logic.

Some irritating practices used by short-sighted employers that create strife are: The use of spy systems rather than the principle that trust begets trust; making agreements and then breaking them over night without notice or consultation; putting harsh rules into effect without explanation; urging or encouraging foremen to employ the iron-hand of discipline; and showing a total lack of consideration and respect for the employees by sudden unexplained lay-offs, and by permitting such poor plant facilities as dirty wash rooms and highway-robbery lunch wagons.

What amazes us is that wherever these trouble-making policies are in effect, you will usually find the same factory spending time and money getting out elaborate house organs and inspirational pamphlets; holding picnics and excursions for the employees, holding big rallies and calling mass meetings so that employees can be inspired by returning war heroes. How utterly futile! When labor-management relations are fundamentally sound, then ideas such as employee picnics are excellent to promote, build up and retain good morale. But when relations are bad, they simply cannot offset underlying friction.

We are confident that most executives in industry and leaders in labor are big enough to get together and make necessary concessions to attain industrial peace. In each trouble-ridden plant there are usually only one or two top men who are responsible for the fire under the friction pot. We cannot imagine that they have taken time out to consider just what their private battle is costing all of us. We foremen are intensely anxious to do anything we can to help end this unfortunate condition. For this reason we have proposed that present ineffective labor-manage-

ment committees in these plants be scrapped. We suggest that new production committees be formed at once in each plant. Choose nine men, three from top management, three from the ranks of foremen, and three from labor. Let them sit down in an atmosphere of genuine sincerity, and that spirit will absolutely produce sensible plans to get cooperation from a new understanding. Inevitably, a huge increase in production of war materials will follow.

Our sons and brothers are in the army too. If production lags in any single plant it is certain that many grand young fellows will pay for it with precious lives. The spectacle of our industrial friction in a few big plants must be disheartening to these boys who are enduring hardships to preserve our American way of life. Thank you.

COMPANY'S EXHIBIT NO. 49-K.

May 5 Broadcast.

Some Keys to Industrial Peace.

Good evening, ladies and gentlemen. Uncle Sam is using every resource to wage a terrible war in defense of those priceless freedoms which are the cornerstone of our true democracy. All patriots agree that if we are to retain the manifold benefits of the system of free enterprise, then we must have free speech and a free press. It often happens though, that the exercise of constitutional rights of free

speech creates obstacles that hamper industry in its effort to increase production. That is a matter which concerns us foremen tonight, because we believe something should be done about it.

Any citizen has a perfect right to speak his mind on the way the war is being run, the errors being made by this or that branch of government and also make predictions. That is a healthy situation and is our democratic method of airing troubles and correcting them. It is 1,000 times better than living under a dictatorship where everyone has to act like a mouse and be "yes-men." But sometimes one or two leading citizens will express opinions that are given wide publicity. Usually, those holding opposite opinions will give the other side of the story. That is all well and good providing that the people who read and are disturbed by adverse criticism also read the opposing views. But it doesn't always happen that way. For that reason we claim that if any statement is made while we are at war which has a tendency to lower the morale of workingmen, thereby bogging down production, then the government or industry or both should act at once by printing up the original adverse opinion and a clear-cut reply by someone eligible to answer. These statements should then be distributed to all war workers to head off any bad reaction that might otherwise result. For example, if a public official makes the accusation that the army is needlessly wasting materials, his assertion, if given wide publicity, would hurt the morale of thousands of workers regardless of the sincerity of the accuser. As things are done now, the government and industry alike assume that the answer to such a damaging statement would be given the same wide publicity and be read by the same people who read the original accusation. We disagree with that theory.

Here is a case in point. During the past month there were some rather serious predictions made by two outstanding labor leaders who informed the whole country that from 600,000 to 2,000,000 workers will be laid off within a few months. According to the spokesman who gave out this information, we have already produced more war goods than the United Nations can use and more than

the United States can transport. That information must make General MacArthur wonder and say "How come we are so short of vitally-needed planes, tanks, guns and men to operate them?" One man, whose remarks were given such publicity, even declared, "We have enough bombs right now to destroy Europe." He is a labor leader, not a military strategist. Yet he doesn't hesitate to give out his own hasty and disturbing conclusions. We doubt very much that military experts could accurately estimate just how many bombs would be required to destroy Europe. "Destroy" is a pretty broad word.

Even if these bear stores were true, this is a mighty poor time to be telling the American public that we have over-produced and that 2,000,000 workers are about to be laid off. Our plants are still running night and day. Leaders of industry, government and labor are doing all they can to step up production by the elimination of such obstacles as absenteeism, poor morale, slow-downs, work stoppages and strikes which plague management in many of our largest industries. But when a worker reads that the more he produces the sooner he is going to be laid off, how in the name of common sense can anyone blame him if he tries to cut down his production, rather than step it up? When he sees such things in print, how can he possibly feel that it is urgently necessary for him to try his best on his daily job? How can he be convinced that he should buy bonds and cooperate to do a job, which according to these self-appointed admirals and generals is already accomplished?

Lieutenant-General B. N. Summervell, who is the commanding general of the Army Services Forces, certainly must know what he is talking about if anyone does. He knows what is being produced, where it is going, whether it got there, what armies need it and why. He is, therefor, far better qualified to give out the facts about production and the manpower situation than any civilian. Here is his reply to these misleading assertions. We quote, "There have been no huge accumulation of stores which could not be moved overseas. In point of fact, we are still not free from difficulties in providing essential cargo for the shipping which is available to us." End quote. He

was speaking before the United States Chamber of Commerce and he went on to say, quote "Widespread discussion of recent reductions in the production program for the ground forces has failed to take into account that the action concerned future schedules, not current production, which is still increasing at a rate of about $100,000,000 a month. Moreover, the rate of increase must be maintained through most of 1943 if we are to reach our goal. Overseas needs are being met, but we are providing our own troops in training this year with only a part of major critical items. However, our allies who have been equipping their armies for a much longer period of time should be provided with their capital needs by the end of the year, although our own army will not be so equipped until late in 1944." End quote. There you have it, ladies and gentlemen. We haven't enough needed supplies for our own armies in training today and will not be able to fully equip our overseas armies until late in 1944. And how about necessary replacements of the war materials that are certain to be worn out and destroyed in constantly-increasing quantities when full-scale operations are being carried out on many battlefronts?

We suggest that the War Production Board can make a substantial and lasting contribution to industrial peace by taking positive steps to nullify any such far-reaching propaganda. We suggest that they print these misleading arguments along with the clear answer of General Summervell and distribute a copy to every war worker in America through his employer. Failure to do so may well result in slowing up the production tempo and defeating the best efforts of government and industry to meet our production requirements.

We foremen have been using radio in an attempt to help out in the drive to step up production. We have repeatedly insisted that if management and labor could get rid of the harmful friction that does exist in many key industries, then most of our troubles such as absenteeism and poor morale would disappear overnight. Most of these troubles have their origin inside the plant but some are started on the outside and filter in. Some like that

prediction that 2,000,000 workers will be laid off in the near future. When these things happen we foremen see the results right away, for our job is on the production lines where we serve as the middleman or the coupling which connects top management with labor. We hear all sides of disputes.

Here is another common practice which makes for industrial turmoil. There are several plants where finished war materials are permitted to pile up in plain view of the workers. Inside these factories you will find posters and pamphlets urging the working force to do their level best, and yet the accumulation of manufactured products would seem to deny the necessity for faster output. This apparent contradiction may be the fault of management or poor government planning or both. But no matter which is at fault we foremen know that it does no good, for the "will-to-work" is virtually impossible to keep at proper pitch under these adverse circumstances. If it is impractical to dispose of finished products because of transportation bottlenecks or other obstacles, then surely the War Production Board or the employer or both should issue some sort of explanatory statement to all employees giving logical reasons for the condition. Ignoring it is far worse than recognizing it and doing something constructive to counteract false impressions.

It astonishes us to observe how much reliance both government and industry place upon the plant visits of young war heroes in order to offset any unsettled conditions which show up as absenteeism or poor morale. In Detroit this week, Sergeant Barney Ross of the Marine Corps, is visiting war plants and telling his experiences to the employees. He is a fine boy whose heroic achievements under fire on Guadalcanal have been a source of pride and inspiration to all. Unquestionably his talks will help production and morale temporarily. Unfortunately, he cannot remain at these plants and keep driving home every day just what he and his buddies have been through. Past experience, following addresses by grand young war heroes, proves that whatever harmful condition was present in the plant prior to the visits returns again to hinder

production. Why can't such a visit accomplish the desired result? Here is the reason. The underlying causes of harmful friction between top management and labor in several key factories are too deeply rooted for even the visit of a Barney Ross to overcome.

The situation isn't the fault of the workers, although they have been blamed for most all of the strikes, slowdowns and work stoppages. As a matter of fact, they are the unwilling victims of frictional cross-fire between their employers and their labor leaders. It just doesn't add up when anyone assumes that workingmen and women are less patriotic than others in our land. Haven't they got sons and brothers in the armed forces too? Aren't they buying their full share of bonds?

The big key to industrial harmony can only be forged through an realistic attempt on the part of top executives and labor leaders to collaborate on an intelligent, fair basis. For this reason, we foremen have made certain suggestions, based on first-hand knowledge of the problem. We propose that present "smoke-screen" types of labor-management committees that can be found in trouble-ridden plants be junked. Let new production committees be formed immediately—committees truly representative of the three vital human elements or groups in each factory. Select nine men; three from top management who have real authority; three from the ranks of foremen; and three from labor. Let them sit down in conference as man to man, actuated by a spirit of genuine patriotism. Let them shed their prejudices and pet and petty dislikes. Let them take off their coats and tackle their difficulty. In no time, such a group will emerge with a new concept of cooperation which will be for the common good. Then watch production take off to a new high! This is not a pipe dream. It has been done in many plants. It can be done in all. To industrial leaders and labor leaders alike we say, "Gentlemen our country needs your cooperation as never before. The emergency is far more important than winning or losing temporary advantages." And now I wish to introduce Mr. Harold M. Kelly, our National Membership Director, Mr. Kelly.

COMPANY'S EXHIBIT NO. 49-L

May 12 Broadcast

Should Foremen Unionize?

Good evening, ladies and gentlemen. Many of you read the special feature called "Wake Up, America!" which appeared in the Detroit News of Sunday, April 25th. It was a newspaper debate on the topic "Should Foremen Unionize," and our worthy opponent in this debate, which was printed in hundreds of newspapers, was R. E. Desvernine, former president of the Crucible Steel Corporation of America. Since the appearance of that brief-printed discussion, we have had numerous requests to state our position more fully. In compliance with these requests, we are happy to give you a more detailed explanation of our side of this controversial subject.

America has undergone a colossal industrial expansion, particularly during the past twenty-five years. Technical progress in such things as metallurgy, marketing, precision instruments, production methods and machine tools, has been almost unbelievable. Time and again science and research have come up with new inventions, processes, and ideas which have made other comparatively new developments obsolete over night. America has made, and is continuing to make, industrial history. The impact of war has increased the tempo. These achievements, which are only possible under the ideal system of free enterprise, make all of us proud that we are citizens of this great country.

But progress in the all-important field of industrial relations has not kept pace with technical advancement. In fact, better methods for handling of employees were not only neglected—they actually went into reverse. The rapid expansion of industry was tainted by the gradual adoption of the false philosophy of rugged individualism, particularly among executives of larger corporations. Many of these men had fought their way up from the bottom—from the bench to the job of foreman, to gen-

eral foreman, and then superintendent, to plant manager, and up. They were justifiably proud of their accomplishments and said, in effect, to others at the bottom of the ladder, "Do thou likewise." What they did not realize was that the princely incomes and acquirement of wealth had made them forget much of what they had been through and the true reasons for their success. They overlooked the fact that, in most instances, Providence had endowed them with superb mechanical genius—genius so great that they forged ahead regardless of their lack of understanding of the human element in business. When they arrived at the top they were finished human products, technically, speaking, who had never had the time or taken time out, to educate themselves in the science of how to treat ordinary workers. They assumed that industrial peace could be had simply by providing fairly steady work and at the same time disclaiming any further obligation to keep wage rates in line with the cost of living or to concern themselves with the general welfare of their employees. This short-sighted policy showed that their personal development in the science of manufacturing had far outstripped their concept of human relations. Under such circumstances it is easy to understand how and why their viewpoint became warped, for their personal progress, development and financial rewards had been largely due to their capacity in creating new sources of profit by improving methods of manufacture. Consequently, they readily adopted the philosophy of rugged individualism, because it meant more profits and condoned any degree of unrestrained greed at the expense of employees. Anything that hampered this sharp appetite for ever-increasing profits—anything such as the annoying obligation of equitable treatment and adequate wages—was brushed aside. Definitely, the ideal democratic system of free enterprise was abused and endangered by this ruinous creed.

We can offer plenty of solid evidence to substantiate what we say, but probably the best proof we can advance is to quote from an editorial which appeared in the May 1st, 1943, issue of the Michigan Manufacturer and Financial Record. The editorial said, "Coming from a president of that august and highly conservative body known as the

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Chamber of Commerce of the United States, the statement that the old style capitalism of a primitive freebooting period is gone forever strikes the ear with peculiar force at this time when all the world is bewildered by what is now and looks forward with misgiving to what may be. The remark was embodied in his speech before the recent annual meeting of the United States Chamber by Eric A. Johnston. Mr. Johnston went on to say, 'The capitalism of complete laissez-faire, which thrived on low wages and maximum profits for minimum turnover and which rejected collective bargaining and fought against justified public regulation of the competitive process is a thing of the past. Those who would turn back the clock of history in this respect are as unrealistic in their way as the addle-brained paper planners of our economic salvation.'" Nothing we could add to Mr. Johnston's statement could make his meaning more clear.

Now during this spectacular prosperity of the twenties, the vast majority of workingmen were in reality discouraged and dissatisfied, because they knew that their wage rates and treatment were all out of whack considering what they had contributed to this era of expansion and bloated profit. It took the collapse of the soaring business balloon in 1930, and the subsequent depression, to bring their feelings to a boil. Fortunately for America, the government passed the Wagner Act which provided a practical procedure whereby men could unionize and bargain collectively to protect themselves against the misuse of industrial power. This legislation has had a beneficial and cleansing effect on industry as a whole, for it stopped exploitation of labor.

But the business ethics of big and little executives, whose tactics were responsible for wholesale unionization, did not change a bit with the advent of the big industrial unions. Foremen generally were prevented from joining rank and file unions with the result that they in turn suffered from the same brand of exploitation that had driven workers to organize. Conclusive proof of this statement is that the Foreman's Association of America has grown from a very few members in August of 1941 to a member-

ship of well over fifteen thousand today with chapters in over thirty-five factories.

The average foreman of today acts as his own negotiator with top management in order to get pay and recognition in keeping with his efforts and experience. In all too many plants, only those supervisors who are blessed with gifted tongues, or who know the right people, or who have the desire as well as the physical stamina to mix after hours, can hope to realize adequate rewards. In such plants, foremen who even possess superior technical and supervisory ability, but lack comparable promotional technique, work under a disheartening handicap.

Foremen are not a class apart. They are men who react to fair treatment just like any normal person. For years they have been the middlemen; truly in the middle—the fellows who stood helplessly on the sidelines and watched others bargain for and get equitable pay rates, practical grievance procedure, full seniority rights, proper job classifications and, most important of all, a sense of security. While the rank and file gained these advantages the foremen got conversations, banquets, conferences, promises, and picnics in many of our large key plants. Is it any wonder then that they have turned to organization and the power of collective bargaining in order to acquire the things which they learned were beyond reach, acting as individuals?

There are many sincere people who imagine that if a foreman belongs to a union he would be unable to carry out the duties of his job properly and efficiently. However, they overlook the fact that when a foreman is convinced that he is not being treated fairly he can hardly give the kind of cooperation and service expected, because his mental attitude prevents him from doing so. It stands to reason that if his morale is boosted by joining a union with some hope of getting adjustment of his grievances, then both he and his employer benefit by the move.

Foremen should unionize to help create plant-wide stability and industrial democracy wherever they work. The organization of foremen for the protection of their rights

is a bigger aid to our war effort and the stepping-up of production than most people realize. It is inevitable that the foreman's frame of mind communicates itself to those under his direction. The better his personal morale, the greater volume of high quality work will his crew turn out for him. This assures making good on vital production schedules.

Foremen should unionize in order to safeguard their basic rights and promote their individual and collective welfare and advancement through mutual aid. There are some fortunate supervisors who are working for conscientious employers—the ones who try to deal fairly and impartially with employees. These men have no need of union affiliation, for they already have what we all earnestly desire—a sense of security and the treatment that promotes and holds it. And yet we feel it would be wise for such foremen to organize chapters in their plants as a form of insurance or a guaranty that they will never lose what they now have. Would they retain it should their employer retire or die or sell out? It rarely happens that new ownership has the same business principles and convictions.

There was an excellent editorial in the Detroit Free Press on May 9th by Malcolm W. Bingay. Mr. Bingay, in writing of the controversy between the coal miners and operators, shows a breadth of vision, and a deep sense of fairness and understanding on the whole subject of unionism that is quite unusual, even though to be expected of a man of his caliber. Speaking of the miners he wrote, quote "There is something wrong with a social-economic system which foreordains generations of Americans to the poverty, squalor, and lack of opportunity which is the lot of the coal miner and his children. The story of the miners from the beginning has been one of exploitation and abuse. All this must be taken into consideration when judging their attitude, for well can they echo the old English proverb 'Every pound of coal that comes out of the pit carries in it a drop of human blood'." End quote. He also writes of the growth of unionism in general. We would like to quote every word but time won't permit. However,

Here are some other portions of his brilliant editorial. We quote "We have come a long way in the betterment of human relations since that period before the Civil War when men were arrested, fined, and imprisoned for daring to organize to improve their positions and to feed their families. If it had not been for the organizations of unions to fight for a higher standard of living we might today have but two classes in America: Peasants and their overlords. Their struggles opened the eyes of society as they had not been opened before to the grievances of labor that had come in with the dawning industrial revolution. They touched a chord of sympathy. Clergymen, editors, and wide-visioned employers took up the crusade that, in the final analysis, saved the American system of government. He who denounces the labor union movement because of the excesses of some of its leaders has little understanding of the vital part the union movement has played in the building of America." End quote.

And now I wish to introduce Mr. Harold M. Kelly, our National Membership Director, Mr. Kelly.

Company's Exhibit No. 49-M

COMPANY'S EXHIBIT NO 49-M.

Broadcast May 20, 1943.

There Can Be No Progress Without Struggle.

Mr. Keys:

Good evening, Ladies and Gentlemen. Freedom is priceless. We Americans value it so highly that, without hesitation, we plunged into the most terrible of all wars in order to keep our way of life. The goal fully justifies any sacrifice we have made or will be called upon to make. For who among us is willing to live under the heel of a dictator or under any form of government which would rob us of those precious democratic rights of free speech, freedom of worship, freedom of assembly and free enterprise? The founders of this republic paid a steep price for those privileges when they endured the hardships of the Revolutionary War. Since that victorious battle for liberation we have learned that we must be prepared always to make sacrifices if we want to preserve and retain those hard-won liberties.

Just as with our nation, so it is with the individuals who dwell under its flag. History proves that if one person or a group want to change long-existing conditions for the better, they are in for a struggle. There is always opposition to change, even though the change may be warranted and be instituted within the framework of the law itself. Progress can only be made where there is a will to fight for and earn it.

The Foreman's Association of America is an interesting mixture of set-backs and successes which run true to the pattern of all great progressive movements. The very fact that we live under the ideal system of free enterprise creates such situations. And we would not have it otherwise. If the sledding were easy, there could be no pride in achievement.

Back in August of 1941, a few of us foremen decided

that if we wanted to protect our rights and make progress, there was only one way to do it, and that was to organize our own association, so that we too could bargain collectively. We arrived at this conclusion by the hard way, the trial-and-error methods. Acting as individuals, we had tried for many long years to satisfactorily adjust personal grievances with our employers. We had failed. Despite our best efforts, we were still getting a raw deal, otherwise there would have been no need of a union, and there never could or would have been a Foreman's Association of America. And please bear in mind that we delayed collective action long after the advent of the huge industrial unions, notwithstanding our realization of the tremendous benefits that had come to all labor purely because of the effectiveness of collective bargaining.

Foremen in many key plants heard of our association, requested information, and of their own accord, recruited members in their own factories. The rapidity of growth far exceeded expectations, for we had assumed that such results were only possible with trained organizers backed up by an aggressive campaign for new members. It showed us conclusively that the lot of foremen in general, especially in the large plants, was anything but beer and skittles. But the faster we grew, the more certain it became that we were heading into a storm of organized and well-financed opposition from our employers and their affiliates.

Things began to happen—but quick! The National Association of Manufacturers became alarmed when the National Labor Relations Board ordered and supervised elections so that the foremen could choose whom they wished to represent them in dealings with their employer on such vital matters as wages, hours, job classifications and working conditions. They were astonished when we won these elections. Right then they awoke to the fact that the foremen were going places and decided they must be headed off before they could gather momentum. The struggle was no longer a preliminary bout—in truth it had become a main event. Mind you—all this time and no

sincere effort by most of these employers to iron out differences with their supervisors. Moreover—no disposition shown to do so even to this date. On the contrary, there has been frantic activity and conniving to accomplish one aim—choke off that Foreman's Association and do it in a hurry! In other words—phooey on the foreman and the underlying reasons why he joined a union—but by all means out-maneuver and out-smart him—slam the door on his chances of ever bargaining collectively, even if there is a Wagner Act. Considering past performances of the Manufacturers' Association, it is easy to understand why they adopted this platform, but they may find that the flanks have been weakened by the termites of unfair treatment.

The first big gun was fired against us by C. E. Wilson, president of General Motors, when he sent his spectacular 800-word telegrams to four committees in the House of Representatives at Washington. By so doing, he chose to advertise his so-called troubles with G. M. foremen to the public. The very next day, March 19th, Representative Howard W. Smith of Virginia introduced a bill before the House Military Affairs Committee which, under the guise of an amendment to the Selective Service Act, sought to prohibit foremen from bargaining collectively, regardless of their desire to safeguard their interests. According to the testimony given by Mr. Wilson and many other nationally-prominent employers before the committee, a foreman is a peculiar and misguided fellow who needs the paternal guidance of his employer so that he, the foreman, will not commit business suicide by promoting industrial chaos. In the same breath though, these same executives insisted that a foreman is such an important part of management that the entire war effort might collapse if he should be permitted to join our association and bargain for a square deal. Strange indeed! The foreman is such a blockhead that he has no idea of the harm he is doing when he joins a union, and yet this same blockhead is the key man of industry. It is a trifle difficult for any sane person to tie in with this inconsistent and contradictory definition of a supervisor.

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After hearing the testimony of all concerned on the Smith Bill, the Military Affairs Committee ignored its restrictive provisions regarding foremen and neglected to incorporate them into an anti-strike and union-responsibility bill which the committee drafted and sent to the House on May 11th. This would seem to clearly indicate that the majority on the committee felt that foremen had every right to organize and bargain collectively under the provisions of the Wagner Act.

However, the Smith Bill had barely been disposed of, when we foremen were the targets of another attack. Just last week the National Labor Relations Board gave us a new headache when it handed down an adverse decision regarding the right of foremen to bargain collectively. The Detroit Free Press printed the whole story and we now quote from their write-up. Quote, "The National Labor Relations Board, reversing an earlier decision, refused today to recognize unions of supervisory employees as appropriate collective bargaining units. The two-to-one decision was handed down in the case of the Maryland Drydock Company, Baltimore. It overruled the Board's decision of last June 15th in the Union Collieries case. The board majority said: 'We are now persuaded that the benefits which supervisory employees might achieve through being certified as collective bargaining units would be outweighed not only by the dangers inherent in the commingling of management and employee functions, but also in its possible restrictive effect upon the organizational freedom of rank and file employees.'" End quote. That is rather complex wording. We wonder who persuaded the board all of a sudden that if foremen unionized it would be dangerous because of mingling management and employee functions? Just where is the logic in their supposition when you consider the indisputable fact that for years and years foremen have belonged to such unions as the Maritime, the Printers, and the Railroad Brotherhoods, to mention a few? If it is such a dangerous thing, then why haven't the railroads and the printing houses and the shipping companies folded up long ago???? And if foremen unionize, just why in the name of common

sense will it restrict the organizational freedom of rank and file employees??? It takes a colossal stretch of imagination to picture a handful of foremen being able to prevent rank and file employees from freedom of organization. Employers tried everything in the book to stop unionization of the rank and file, waged a costly and bitter battle and lost out. If huge corporations couldn't do it with all of their power and resources, then how could we foremen even if we were foolish enough to try????? The board's decision went on to say, quote, "We are of the opinion that in the present stage of industrial administration and employee self-organization, the establishment of bargaining units composed of supervisors exercising substantial managerial authority will impede the processes of collective bargaining, disrupt established managerial and production techniques, and militate against effectuation of the policies of the act." End quote. Translated into plain English, they mean that foremen would wreck the Wagner Act if they are permitted to organize and bargain collectively. If the Wagner Act could be so disrupted by foremen, we should think that the best judges of that possibility would be the big rank and file unions. Far from believing that our association would hurt their processes and rights of collective bargaining, it may surprise the National Labor Relations Board and the Manufacturers' Association both to learn that we have been assured by the national officers of the large unions that they understand why we were driven to unionize; that they are in sympathy with our endeavors to protect ourselves; that they believe we have every right to form our own union; and that they are of the opinion that our association will benefit rather than harm industry. If our movement were harmful to the best interests of these unions and labor as a whole, then it stands to reason that the heads of the unions would realize it better than anyone el in the country. Had the National Labor Relations Board consulted the national officers of the unions beforehand, they could hardly have issued their statement which made scraps of paper of their previous rulings. We also wish to mention that the large unions

do not want foremen in their union. We started out as an independent organization and we are determined to remain unaffiliated in order to be of greatest service to our membership.

There are three men on the National Labor Relations Board. It was a two-to-one decision. The vote of one man, therefore, deprived some five million foremen in this country of access to the N. L. R. B. for their protection.

Such a decision cannot stick, for it is not based on simple justice and the rights of citizens as written in both the Constitution and the Wagner Act itself. If this far-reaching and disastrous interpretation of the terms of the Wagner Act is allowed to stand, then the whole structure of collective bargaining is in grave danger. Labor itself will be the next victim of misinterpretation, because it means, in effect, that the act can be twisted in its application to one class of employees one day, to another the next, and so forth, depending upon the whims and the private convictions of individuals on the board, rather than on the bed-rock foundation of the law as written. We categorically state that it is an erroneous interpretation of the act and we will use every lawful means at our command to secure a reversal.

And now I wish the introduce Mr. Harold M. Kelly, our National Membership Director. Mr. Kelly.

Company's Exhibit No. 49-N

COMPANY'S EXHIBIT NO. 49-N.

"Collective Pressure."

December 2, 1943.

Good evening, ladies and gentlemen. The many noteworthy events of the first eleven months of nineteen forty-three have already stamped it as one of the momentous years in American History. So much has happened, and is happening, that even six months back seems a long time ago to most of us. Unquestionably, the wonderful succession of victories achieved by our armed forces and those of our allies has been the most important and gratifying to all. While we Americans realize that we still face tremendous, costly battles with our enemies on all fronts before this war can end, each of us, soldier and civilian alike, is giving serious thought to post-war America and the inevitable problems that will arise. This is understandable, for none of us want a repetition of the acute, yet avoidable, depression that followed the armistice of nineteen eighteen. For that reason we foremen fully approve intelligent post-war planning by executives in both government and industry so that the shock of changeover from wartime to peacetime manufacturing may be cushioned, providing, of course, that such post-war planning does not interfere with our output of war materials, or prolong this conflict by even as long as a single day.

We Americans are encouraged, therefore, when we read about the sincere efforts of leaders in government, industry and labor to formulate plans on a nation-wide basis that will forestall any recurrence of the condition we found immediately after the first world war.

We foremen have a genuine stake in this country and, we too, are anxious to do our part through the Foreman's Association of America in setting up post-war plans. Cooperation, however, is not a one-way street and we can hardly make effective use of our vast storehouse of years of experience unless our employers are willing to confer

with us in an atmosphere of mutual respect and understanding. It shouldn't be necessary for us to remind manufacturers of the manifold benefits that would surely result from such conferences. We could cite innumerable occasions where top management and supervision got together around the conference table, discussed problems and came up with practical, workable solutions. For example, at the meeting of the American Management Association held in New York last month, Mr. J. M. Druliner, Chief Industrial Engineer of the Consolidated Vultee Aircraft Corporation, said, in the course of his talk before the members, that his company had developed marvelous suggestions from the rank and file; suggestions that, in one year, had saved the company two million dollars. In addition, he said that they had also developed a suggestion plan for their supervisors, and that the ideas the company had developed from their foremen for reduction of costs had saved their company twenty million dollars. Think of it! For every dollar they saved through new ideas from their workers, they saved ten dollars through ideas from their company. This shows how important the foreman is in a company set-up and how much he can contribute to the success of an employer if given the opportunity and proper incentive to do so. When we use the word "incentive," we don't have money alone in mind, but of even greater moment incentive to a foreman means fair treatment, something that the average foreman has not been getting.

There you have the underlying reason for the organization of the Foreman's Association of America. Our Association is a comparative newcomer in employee unions, for it was just two years ago in November nineteen forty-one that we held our first election and adopted a constitution. A few of us foremen had talked our situation over in August of that year and decided it was about time that we formed some kind of organization for the protection of our individual rights. We didn't need any spellbinders or professional organizers to arouse us to action. Our move was absolutely spontaneous, because we were fed up with the treatment we were getting from top management.

Company's Exhibit No. 49-N

Frankly, though, we never dreamed of what was going to develop from our original idea. The movement spread so rapidly among the foremen in our large plant that we were swamped with applications to join.

You will be interested to learn that we only had twelve hundred members two years ago. By December nineteen forty-one, twelve months later, we numbered over ten thousand. By May this year fifteen thousand foremen were active members. Today, our membership rolls show approximately twenty thousand. And all of that phenomenal growth in the short span of twenty-four months! What is more, all of them came in voluntarily. We would be the first to resent coercion or any part of it. As a matter of fact we were ten thousand strong before we elected one of our members to the full-time position of membership organizer, and he has been on the job eleven months now. Prior to his election we did not pay a cent of salary to anyone for membership work. These facts and figures are rather conclusive evidence that there is something radically wrong with the managerial policies of our employers from the human relations standpoint. There is—plenty!

We have heard some silly rumors that the men who belong to our Association are mostly small fry or assistant foremen. On the contrary, the great majority of them are first-line, top-notch foremen, many of whom supervise the productive work of several hundred men and women along with a group of foremen and their assistants. It should be obvious that, before a man is advanced to the responsible position of supervisor, he must have proven his ability to handle the technical duties of his job, as well as direct the activities of other employees.

Our Association was started and is flourishing, because all of us joined up with the determination to exert collective pressure on our respective top managements in order to safeguard our rights and adjust our grievances by the only proven method open—collective bargaining. For many long years—too long—each of us tried, acting as individuals, to get equitable adjustment of our difficulties.

We failed. Consequently, forming our own independent union was the next logical step.

This is an age of collective pressure which in turn has resulted in the modern, acceptable methods of collective bargaining used in industry. Where would the rank and file of American labor be today without that potent weapon? The best answer we can give to that question is to quote from a speech given this year by Eric A. Johnston, President of the United States Chamber of Commerce. Coming from the head of that august and highly conservative body, the statement surprised many. Here it is, quote, "The capitalism of complete laissez faire which thrived on low wages and maximum profits for minimum turnover and which rejected collective bargaining and fought against public regulation of the competitive process, is a thing of the past. Those who would turn back the clock of history in this respect are as unrealistic in their way as are the addle-brained planners of our economic salvation." End quote. Does that sound to you as though employers had tried to deal justly with their employees? Do you wonder then why we foremen who were barred from membership in the rank and file unions were finally forced to organize and act collectively so that we too may have effective ways and means of securing our reasonable demands?

When a situation calls for collective pressure you will find the world's biggest men using it. President Roosevelt, Prime Minister Churchill and Premier Stalin are well aware of its power and how to use it. And we can be glad of it, for the collective pressure they have brought to bear, politically and militarily, on the Axis nations, has paid, and will continue to pay, big dividends in the successful conduct of the war and final victory.

The National Association of Manufacturers, the United States Chamber of Commerce and the Automobile Manufacturers Association are well-organized and well-financed groups that know and appreciate the value of collective pressure in protecting their property and business rights. And there are great number of other societies, organiza-

tions, associations and unions of every type in this republic that use collective pressure to the hilt.

For the past nine months our Association has been the target of the various organized groups on manufacturers, because they are quite determined in their refusal to recognize us as appropriate collective bargaining units, even though the Wagner Labor Relations Act clearly defines our constitutional rights in this regard. In March of this year they attempted to get the Smith Bill before Congress for a vote. Hearings were held for several weeks before the House Military Affairs Committee and many industrialists, headed by C. E. Wilson, President of General Motors, journeyed to Washington from all over the country to testify in favor of the Bill. This Bill will have prevented us foremen from membership in any labor union. The Bill died in committee, but since then we have had to cope with the most expensive legal talent and management experts in numerous hearings before the War Labor Board, all battling to stop us from bargaining collectively.

Then in May of this year the National Labor Relations Board, by a two to one decision, ruled that foremen were not an appropriate collective bargaining unit. This unconstitutional denial of our rights, as clearly defined in the Wagner Act, was a complete reversal on the part of the National Labor Relations Board, for they had previously declared that foremen were eligible to bargain collectively.

When this happened the manufacturers were pleased and convinced that our Association would fold up. They forgot, however, that the law requires the War Labor Board to hear disputes between employer and employee. The ruling of the National Labor Relations Board did not erase the underlying causes of foremen dissatisfaction. Besides our employers misjudged the real depth of the grievances of foremen as well as their unbreakable resolve to continue the fight for their rights. And, to their amazement, thousands of new members have affiliated with us in spite of the adverse National Labor Relations Board ruling.

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Since that unfortunate and unwise decision of the National Labor Relations Board our members have been forced to strike in three different plants, because working conditions became unbearable. These strikes, while of short duration, served notice on manufacturers everywhere that foremen could form a picket line and that production would come to a virtual standstill as a result. We did not want to harm the war effort, for we have sons and brothers in the service too. We had every reason to strike, however, in several other plants, but did not do so when we were appealed to by the War Labor Board and other governmental agencies. As a result of their appeal we chose to take it on the chin temporarily, pending the recognition and acceptance of our just demands for certification as appropriate collective bargaining units.

We urge you foremen who have no union affiliation to listen in to these broadcasts every week so that you will know why it is to your advantage to join hands with the twenty thousand foremen who now belong to our Association. Our fight is your fight! But we need your active help and participation to help us carry the ball to make certain that you will reap the many benefits which are bound to come from our united efforts. Any of you who want more detailed information about our organization can have it for the asking. There is no obligation involved, for we are glad to co-operate in every way possible. Thank you.

COMPANY'S EXHIBIT NO. 49-O.

The Republic Steel Walkout.

December 9, 1943.

Good evening, ladies and gentlemen. In last week's radio talk we said that the members of our association had been forced to strike in three different plants during the past six months, because working conditions affecting them in particular had become unbearable. Now anyone can make a broad statement of this nature and, whether true or false, let it stand. But because of the serious effect of any work stoppage on production of critical war materials we feel obligated to make clear to you just why the foremen were forced, as a last resort, into walking off the job. So we are devoting tonight's radio time to a frank discussion of the causes and effects of one of these widely-publicized walkouts; the one that occurred recently at the big strip mill of the Republic Steel Corporation in Cleveland, Ohio.

In so doing we are acting in a spirit of constructive criticism and suggestion for the benefit of industry as a whole. Working conditions for foremen in all too many plants are no credit to their managements. This avoidable situation makes for trouble, not labor peace, because the foreman, the key man of industry, really controls the morale of employees wherever he works.

We are not on the radio to spout complaints and throw mud at American industry, but rather to give you factual information in order that you will have a true picture of us foremen in the all-important matter of our relations with our employers. Unless the present status quo is corrected,—and corrected in the near future—then all labor, all labor-management relations, are bound to be adversely affected, for it is impossible for any plant to foster and maintain plant-wide good morale when the foreman is the goat of the whole set-up. We cannot, therefore, gloss over the plain facts or evade the issue, if we are to clarify our position.

Company's Exhibit No. 49-O

An important contributing factor to the Republic Steel trouble was the action taken by the National Labor Relations Board in May, nineteen forty-three. The N. L. R. B., composed of three members, considered the matter of the foreman of the Maryland Drydock Company who wanted to bargain collectively with their employer. By a two-to-one decision the Board ruled that these supervisors did not constitute an appropriate bargaining unit under the meaning of the terms of the Wagner Act. Prior to that adverse decision, the N. L. R. B. had decided that foremen were eligible to bargain collectively. Consequently, the May ruling was a complete reversal of the Board's previous stand.

We foremen insist, however, that we do have the same right to organize and bargain collectively, by virtue of the Wagner Act, as the rank and file in industry, and we are not alone in that conclusion. The author of the Wagner Act, Senator Robert Wagner himself, feels as we do. So do many other prominent congressmen and government officials, including the chairman of the National Labor Relations Board, Harry A. Millis. The same opinion is held, and has been publicly expressed, by the foremost labor officials.

The unwise ruling of the N. L. R. B. however, convinced most employers that their foremen had no right to act as a group, rather than as individuals, in any effort to obtain redress for their legitimate grievances. Unfortunately, some employers, among them Republic Steel, not only ignored their supervisors in this regard, but adopted a stiff, uncompromising attitude, a throwback to the old days of labor relations, which were directly responsible for the passing of protective labor laws and the wholesale unionization of the workers in most industries. Since last May, these employers have adopted an attitude toward their foremen, which says in effect, "We are the sole judges of whether you foremen have any grievances and, if we don't think so, it's just too bad. We own and operate this business so, when we crack the whip you had better jump or else!" The foremen of Republic Steel first tried to adjust

their grievances by individual negotiation. Next they tried to iron out their problems by group conferences. They both failed. Inevitably, such a load of internal pressure built up that the lid blew off in the form of a walkout. Yet, while the N. L. R. B. decision undoubtedly aggravated the whole problem, it was by no means the basic factor.

Let's take a look behind the scenes to learn why the foremen walked out and formed a picket line. First we find the immediate cause of the strike. The company hired a man who knew nothing whatever of rolling, cutting or ordinary steel mill work, and paid him the same rate as a foreman. Naturally, the experienced foremen who had served their apprenticeship, learned their trade, and come up the hard way, didn't like it and couldn't understand the action. They had nothing against the new employee as an individual, but giving him the rating of foreman when he was a green hand made them question the motive behind the move.

When their committee approached the management to register a protest they got a rough reception. They were told in hard-boiled language where to go, and given the choice of getting out of the plant or doing whatever they cared to about it. Nice interview! We submit that no self-respecting American will take this brand of treatment.

The strike action which followed was the visible result of a long chain of grievances which had reached the boiling point, because the management had done nothing worth mentioning to correct them. Take the matter of wages. The wages of the workers at Republic Steel, like wages in all steel mills, have risen to a new high, while those of the supervisors have lagged far behind. The result is that there are many instances on record where a foreman has been paid one hundred and thirteen dollars for ten days' work, an average of eleven dollars and thirty cents per day, while a workman under his supervision has drawn down anywhere from two hundred to two hundred and sixty six dollars for the same ten day period, an average of from twenty to twenty-six dollars per day. Since

when, or by what method of figuring, is a foreman's time only worth half as much as that of a worker in his department? It is partly because the Republic foreman is paid a daily salary, supplemented by a peculiar and unsatisfactory overtime arrangement. While the steel mill employee has been getting wages in accordance with his skill and experience, along with sensible adjustment of his grievances, all through his affiliation with his union, his foreman is left holding the bag mainly because he is not permitted the advantage of recognized, effective collective bargaining procedure. Now Republic Steel foremen do not begrudge the workingman under their supervision the high wages which they are receiving. That isn't the point. The workers don't set the rates of pay for foremen, but management does. How can a foreman take on the responsibility of supervision and do a good job, when he is receiving such grossly inadequate "out-of-proportion" pay? He can't! And neither can anyone else in comparable circumstances.

You have to go back a long way to discover why foremen at Republic Steel and many other plants, large and small, are underpaid. During the spectacular prosperity of the twenties, the vast majority of workmen were dissatisfied, because they knew that their wages were all out of whack, considering what they had contributed to that era of expansion and huge corporate earnings. The worker was the victim of unrestrained greed at the top. When the depression hit this country in the thirties, unemployment and low wages were the order of the day. Overwhelming public opinion, spurred on by the sorry spectacle of want amidst plenty, brought about the enactment of the Wagner Act which provided a practical, benevolent method whereby men could unionize, bargain collectively and protect themselves against any abuse of industrial power. With the advent of mass unionism, top management began to exploit their foremen just as they had previously exploited their workers. The foreman is now going through the same bitter cycle of exploitation that was the lot of the workingman before the Wagner Act.

Company's Exhibit No. 49-O

There were many additional reasons why Republic Steel foremen walked out. For example, the corporation refused to recognize the Foreman's Association of America as the collective bargaining agency for foremen employee members, despite the fact that the great majority of the supervisors are members of our association. They also refused to meet with duly elected representatives of our association to discuss and correct the unfair employment conditions of our members.

Besides, the policies of the company toward foremen on such vital matters as seniority, temporary pay adjustment upon change of status, sick leaves allowances and vacation plans, are a source of constant irritation. But that isn't all. Republic foremen are expected to put in plenty of overtime on the job without compensation.

Now let's find out what happened during and after this strike. On Friday, October eighth, the supervisors threw a picket line around the steel mill. Nearly one thousand CIO steel workers refused to cross it. They were union men and a picket line meant a picket line, regardless of what union was involved. Government labor officials immediately contacted all officers of the CIO local and, with one exception, all of them refused to order their members to cross the foremen's picket line.

The situation was serious, there were several thousand tons of steel lost within two days. Something had to be done quickly. Members of the War Labor Board and the Conciliation Service urged the management to discuss the whole matter with their foremen, but they refused. Next they approached the striking foremen. Although these men felt justified in their action, yet they deeply regretted any harm to the war effort. They too have sons and brothers and relatives in the armed forces. They are American to the core, men who have reason to be proud of their part in this war, not only by their purchase of bonds and many other acts, but particularly by their invaluable contribution of donating overtime work under trying conditions. And they gave still further evidence of

their genuine patriotism by agreeing to return to work after they were appealed to on patriotic grounds by the officers of the Foreman's Association of America and government labor officials.

This walkout has demonstrated in no uncertain manner that when foremen are driven to such drastic action they can bring production to a standstill. We don't want to strike, especially in these critical times, and have avoided such moves time and again.

If management assumes that foremen are out on a limb, because of the temporary stand of the N. L. R. B., they are in for a rude awakening. The War Labor Board has accepted jurisdiction over the Republic Steel and several other recent foreman-management disputes in large plants.

In future broadcasts we will discuss the foreman's job in modern industry, the N. L. R. B. decision, the right of foremen to unionize, the foreman's contribution to the war effort, the foreman's future, the outlook of the Foreman's Association of America, post-war planning, the position of the foreman in plant management, how the foreman can protect his rights, and the two other strikes in which our members have been involved since May of this year. We urge you foremen who are not members of our association to contact us for information at once.

Our campaign for recognition and official reinstatement as appropriate collective bargaining units is of vital concern to you. If you will cooperate we are certain of success, but if you don't, then it may be fifty years before you can gain the measure of security to which you are entitled. Thank you.

COMPANY'S EXHIBIT NO. 49-P.

Have Foremen the Right to Unionize and Bargain Collectively?

December 16, 1943.

Good evening, Ladies and Gentlemen: In the classified section of the Detroit Telephone Directory, under the heading of Associations, there is a page of names. There you will find listed about two hundred business, professional, social, labor and fraternal associations. Yet we doubt this listing records even one-fourth of the actual number of organized societies in this great city.

Why all these associations? Why do men and women pay dues and devote valuable time to be identified with organized groups? The answer isn't hard to find. Rarely do you look over a newspaper but what you will read of this or that society registering a public protest against something or other which, in their estimation, endangers the individual and collective welfare of their members. Whenever advisable, they follow up the protest with positive action, usually in the form of a committee of their leaders, representing their membership. This committee will go in a group to argue their particular trouble with whomever stepped on their toes. That, ladies and gentlemen, is strictly the old-fashioned American way of protecting rights by united action, by collective bargaining if you please. Some may call it a delegation, but in our book it is still collective bargaining by a chosen group.

Let's take the doctor, for example, who practices medicine under license of the State of Michigan. To get that precious license, he had to invest considerable money and years of hard study. After graduation, came a year of internship at some hospital for low pay. Following that, he was eligible to hang out his shingle and struggle to build a clientele. To continue practicing and retain his license, however, he had to abide by authorized state regulations, designed to prevent the misuse of his knowledge.

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He is totally dependent on his own efforts to make a living and build for the future, but he realizes that things could happen—things beyond his control—which would jeopardize his plans unless he is on his guard. To insure his future, therefore, he joins the Wayne County Medical Society, because he knows that he can best protect his interests through active membership and collective strength. His reasoning is sound.

Now let's suppose that he opens his mail some morning and finds a letter from the State of Michigan announcing that within ten days from date he will not be permitted to charge any fee for the removal of tonsils, regardless of his patient's ability to pay. What a shock that would be! Immediately, he contacts his society, only to learn that all physicians had received the same letter. Of course, the officers of his society rush to Lansing at once to protest this unwarranted, unconstitutional ruling. The state official, responsible for the order, refuses to meet with them as a group. He says, "Gentlemen, I won't discuss your protest with you as a group. If any one doctor wants to talk with me about it I will do so. I may permit a few to charge for the removal of tonsils and again I may not. No promises! Good day, gentlemen." The committee would hit the ceiling and, failing to budge the dictator, would certainly take other means to fight for their constitutional rights as American citizens.

We have used our imagination to picture a possible situation confronting a doctors' committee. But we are not using our imagination when we tell you that if a duly-elected committee of our foremen approaches top management in most plants today to present a legitimate protest, we are actually given a similar reception which we just described for the committee of physicians. Whether a grievance affects a few or all of us we are informed that our employer will not deal with us as a group, but only as individuals.

Right there you have the underlying reason why we foremen organized our own independent association, the

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Foreman's Association of America. For many long years, acting as individuals, bergaining on an "every-man-for-himself" basis, each of us had been unable to get equitable adjustment of our grievances. Consequently, we were forced to seek collective relief from intolerable conditions.

By what legal and moral right have we to adopt this procedure? Let's be realistic! We foremen have the same legal right as the doctor or the lawyer, under the law, to form, and become active members of, our association. The proof of this is that most of the big manufacturers of the country ganged up on us at Washington last March by promoting the vicious Smith Bill. This proposed legislation was aimed directly at us foremen. Had it passed it would have made it a crime, punishable by either a fine or a prison term, or both, for any of us to belong to a union. And remember that this below-the-belt wallop was aimed at the production line leadership of industry right during a crucial time when the government was urging management and labor to cooperate for the common good. Moreover, it is a matter of record that the instigators and backers of this ill-timed move were some of the biggest executives in the nation, men like C. E. Wilson, President of General Motors, C. C. Carlton and many others. Hearings on the measure were held for several weeks before the House Military Affairs Committee. We organized foremen also journeyed to Washington to give our factual testimony in opposition to our employers. The final result of the hearings reflected the truth of our claims as to why we needed collective bargaining. The Smith Bill died in committee.

Now the Wagner Act was passed by Congress in order to set up definite, workable machinery so that the workingman could unionize and bargain collectively for the express purposes of getting an adequate wage, raising his standard of living and gaining for himself and his family a reasonable degree of security. The language of the Act is crystal clear. Through the years it has withstood every attempt to weaken it with proposed amendments or to in-

vent new meanings for the written words, especially the word, "employee." Section Two, paragraph three of the Wagner Act states, quote, "When used in the Act, the term 'employee' shall include any employee." End quote. Our employers have tried frantically to prove that we are not employees, as defined in the Dictionary; that we are a part of management and, therefore, are not eligible to the manifest benefits of the Act. They admit, however, that we don't own stock or participate in the profits or formulate company policies or have the right to hire and fire. True, we do relay the orders of top management to the rank and file and, in that respect, are agents of management. But it is equally true that it is a part of our job to give those orders whether we do or don't agree with the necessity for, or wisdom of, their issuance. An accurate description of a manager would certainly include the privilege of using his own judgment, something we are not allowed to do. Some orders given us are of a trouble-making variety for which we foremen are blamed by the workers whose activities we supervise.

The heated controversy which is raging today between us foremen and our employers centers on our right to collective bargaining. The employers centers on our right to collective bargaining. The employers won a temporary victory last May when the National Labor Relations Board reversed its previous stand and suddenly ruled that we were not appropriate collective bargaining units, but at the same time the Board acknowledged that we were employees within the meaning of the Wagner Act. It is rather difficult for us to fathom the logic of their unconstitutional ruling, for it is so contradictory. On the one hand they admit we are employees, yet they do a right-about-face and place a new interpretation on the law by deciding that we must not act as a group to secure redress for our grievances, no matter how legitimate they may be.

That temporary advantage, gained by employers through the N. L. R. B. adverse ruling, has been, in reality, a blessing in disguise for our just cause. It has served to focus

national attention on our plight in the plants where we are employed. It has served to bring our case before the all-powerful War Labor Board in its true light. And it has been directly responsible for our tremendous growth in membership within the past six months. In May, Nineteen Forty-three, we had twenty-eight chapters and some twelve thousand members. Since the very day in May when it appeared as though we were sunk by the unfair decision of the N. L. R. B., eight thousand new supervisors —yes, eight thousand—have joined our association and are paying dues. In the short space of six months we have added forty-three new chapters. We suggest that manufacturers everywhere consider these facts seriously, before congratulating themselves on having pushed the foreman back to a state of hopeless outlook; a state where he would lack the necessary power of group action and the collective and individual will to fight for equitable adjustment of his grievances of long standing. Finally, and most encouraging, the N. L. R. B. decision has welded us, old and new members alike, into a new bond of unified determination, a development which would have been impossible without absolute conviction of the justice of our crusade. Is it reasonable to assume that twenty thousand men—intelligent Americans, good citizens—men who have been promoted to the responsibility of foremanship on the basis of merit—would continue their active support of our association during such a critical period, if their troubles were mere figments of their imagination?

We demand the right to bargain collectively in accordance with the procedure laid down in the Wagner Act, and we have no intention of taking a breathing spell until we get it. In making such a demand we are only asking for our constitutional rights. The rank and file of industry enjoy that right. Why should we foremen be denied the same privilege? Is our demand, therefore, unreasonable? By their actions, plant managements as a whole have destroyed our confidence in getting a square deal by any method short of collective bargaining, the proven way. We have tried all other avenues and failed.

Company's Exhibit No. 49-Q

We invite all unorganized foremen to contact us and learn how you can assure yourselves the genuine security all of us desire. Even if you are satisfied with your present arrangements may we remind you that in the event of a shakeup in executives of your company or in the policies of your management, things might change overnight.

We can win out if we pull together, but mere words are not enough. We need new members, new chapters to give us the additional collective strength to assure a favorable outcome. Unless you have the right to bargain collectively you simply have no guarantee of fair play, now or after the war. Why gamble with your future, your security? We must achieve our objectives now, for if we fail it will be fifty years before we foremen will have such another golden opportunity to place a reservation for a seat in the industrial show. Thank you.

COMPANY'S EXHIBIT NO. 49-Q.

"Are Foremen's Grievances Real or Imaginary?"

December 23, 1943.

Good evening, ladies and gentlemen. The remarkable progress made by American industry during the past twenty-five years in the development of natural resources, of materials, of manufacturing methods, machine tools and processes, is so extraordinary that no one person can grasp the whole picture. Indeed we have come to accept these great technical achievements as a matter of course.

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But how fortunate we were that this vast reservoir of experience was so flexible that it could be converted almost overnight to the manufacture of sorely-needed war materials. Each of us realizes that American ingenuity has met the emergency, not only with quantities, but also with new plastic materials and new alloys and sensational developments in the field of electronics as well as new and deadly devices and weapons for waging war. Only after victory will we learn the inside story of how these things contributed to the defeat of our enemies. Then we, who had a hand in these technical accomplishments, will be justifiably proud.

We sincerely wish that we could enthuse in the same manner over the progress made in industrial human relations during the same past twenty-five years, and, particularly, during these two war years, but cold facts prevent our doing so. The relations between most managements and their employees have not only failed to keep pace with technical progress, but, unfortunately, have promoted bitter strife. Even since this world war started we have been constantly jolted by the spectacle of harmful friction between management and workers in the huge war plants; friction that continues to show itself by work stoppages, all too often.

Let's take a brief look at the ten years immediately preceding the depression, when the horn of plenty was looted on all sides. Labor was being exploited right, left and down the middle. The higher corporate profits mounted, the greedier plant ownership became, to the point where management sat up nights figuring out new schemes to increase production at the expense of the workingman. Instead of paying him in proportion to his contribution to their prosperity they sought ways and means to limit his earnings. We aren't telling you anything new, but rather reminding you of proven facts. This shameful era of our industrial history resulted in the enactment of drastic labor laws to protect the worker.

Now you would imagine that all manufacturers would learn from this experience that any attempt to exploit

workingmen is bound to stir up resentment, which in turn resolves itself into militant collective action. Some few employers did see the light and adopted far-sighted policies in their human relations. But they are a distinct minority whose intelligent handling of employees has made them unpopular with fellow industrialists.

After the Wagner Act was passed, mass industries unionized and then struck for recognition. You will recall those hectic days and the final outcome in the form of signed collective bargaining contracts.

When these contracts were executed most of them specified that foremen were excluded from membership in the workers' unions. Yet we had no reason to expect that this exclusion would so adversely affect management's attitude toward us. But from then on the actions of our employers definitely indicated a drastic policy which said in effect, "You foremen have no collective bargaining rights, so we can do as we please about your wages, working hours, and conditions and classifications."

It took us several years to wake up to the fact that times had changed. Each of us thought that the condition was only true of the particular plant in which we worked. Then we discovered that, on the contrary, it was widespread, in most plants.

Now if we organized foremen, members of the Foreman's Association of America, were to conduct a survey of the working conditions of supervisors in plants where we have no members, the results would be taken with a grain of salt, especially by employers. They would claim that we had colored the facts in order to attract new members.

It pleased us no end, therefore, that such a survey was made this year, not by us, but by a nationally prominent representative of management, Mr. Guy B. Arthur, Industrial Relations manager of The American Thread Company. He is one executive who acknowledges the industrial strife now going on between foremen and their employers. Consequently, he decided to get to the bottom of the trouble by making a genuine survey of several

industries, and he came up with the answers. We pay tribute to his courage and progressive attitude in presenting those answers, without pulling punches, in his talk to the members of the American Management Association, assembled for their annual convention at the Hotel Pennsylvania in New York City in September, 1943.

The survey was made among a large number of foremen in the following industries: steel, glass, food products, textiles, heavy machinery, hardware, paper and wood products. Here are the facts, astonishing to many but not to us, which he detailed.

Survey Answer Number One. Despite all that has been said or written about organization charts, fifty-four per cent of the supervisors are still plagued with the absence of definite lines of authority. Seventy per cent said they had more than one boss. Many stated their companies had a form of organization chart, but said it is not followed out where the work is done. One even reported that the president issued orders to four or five different people for things he wanted done in one department.

Our Comment. How any supervisor can perform his job without a definite line of authority has never been explained, yet most managements still expect us to do so.

Survey Answer Number Two. Fifty-four per cent said their activities are restricted to a degree which handicaps their efforts.

Our Comment. Who keeps them from having a free hand to carry out their work, if not top management?

Survey Answer Number Three. Older foremen recognized the ability of time study specialists, but insisted that such matters as earnings of employees should be handled by the foreman. Likewise they believe that they themselves should be trained to handle grievances, discharges and transfers. Some said the worst restrictive force they encountered was their respective personnel departments.

Our Comment. You can readily understand from this answer what has happened to the foreman. He can't hire

or fire or transfer or give raises or handle grievances. Yet he is held responsible for practically everything that happens in his department.

Survey Answer Number Four. Seventy-two per cent did not believe they have been, or are being, properly trained for their jobs.

Our Comment. No wonder! Most of us foremen work in the dark on such vital matters as company policy. We are given the responsibilities and the headaches without the necessary information to improve our foremanship. It's about as sensible as if a swimming instructor were to say to a boy who had never been in the water, "Now kid, you jump right in and you'll learn fast. I don't believe in giving instructions until you're going down for the third time."

Survey Answer Number Five. Foremen reporting stated they want to understand thoroughly all of their company's basic policies and believed they could be helpful in revising existing policies and establishing new ones. They would like to be consulted on the formulation of all policies which affect their employees, since they are closer to these persons than anyone else in the organization. They felt that much employee dissatisfaction could be eliminated if such procedures were adopted in building policies.

Our Comment. We foremen are the key men in industry and the morale of the rank and file under our supervision can be no better than our own morale. When top management refuses to treat us with the respect that is our due, then how can they expect to foster good morale among employees?

Survey Answer Number Six. More than a few criticized the ridiculous training programs which management has developed for them; ridiculous because they include everything from purchasing to selling. While they like general information regarding the company and its various staff operations, what they really want is specific training on policy, safety, production and human relations.

Our Comment. Employers today are using a lot of training 'Mumbo-Jumbo' simply because it serves as a subterfuge to offset and cover up a policy of exploitation. It is quite clear from this answer that foremen everywhere object to these smoke-screen training programs.

Survey Answer Number Seven. Sixty-three per cent reported that they are not being paid proportionately higher wages than their subordinates. In fact, a surprisingly large number pointed out specific cases where individuals working under them are making more than they themselves receive. Almost seventy per cent stated that they have no differential in wages.

Our Comment. This is one of our most acute grievances —one of many which prompted us to organize our own association. Is it any wonder that we demand collective bargaining rights to correct such unfair treatment as saddling us with the responsibility and the long working hours peculiar to foremen, only to see employees under our direction draw bigger pay checks than we do? Please remember too that we have tried for years, acting as individuals, to get equitable pay, but have failed. That is why we are so convinced that we can never hope to get a square shake on wages until we have gained official recognition as appropriate collective bargaining units.

Survey Answer Number Eight. The personal objectives of the supervisors reporting were:

1. Advancement
2. Financial gain.
3. Security
4. Help other people

Our Comment. We submit that these demands are not unreasonable. Every self-respecting American has the same goals. These also happen to be the objectives of the Foreman's Association Of America. The fourth part of this particular answer, namely, "Help other people," is indicative of the high principles actuating the average foremen.

Company's Exhibit No. 49-Q

Survey Answer Number Nine. Fifty per cent said they were definitely unhappy in their present work, and when asked why, ninety per cent blamed management—not labor, not shortage of material, not government regulations, not long hours, not manufacturing difficulties—but management.

Our Comment. Is it possible that such a large number of foremen from so many diversified industries could all be wrong; could all be gripers?

There, ladies and gentlemen, you have the results of an honest survey made by management among a large number of supervisors in many plants and several different industries. We repeat that they, not we, made the investigation. We believe that the results bear out our contention that foremen's grievances are quite real.

Some of you unorganized foremen who are listening in tonight may have participated in the survey to which we referred. Whether you did or didn't we want you to know that the Foreman's Association of America offers a practical solution for your problems in the form of twenty thousand active members carrying on the fight for recognition as appropriate collective bargaining units. Eight thousand unorganized foremen from some thirty-eight plants have joined us in the past six months. Are you one of them? If not, we urge you to get busy and request any information that you may desire. We will be happy to cooperate, and assure you that your request will not obligate you in the slightest. In closing, may we take this occasion to wish all of you a most joyful Christmas. Thank you.

COMPANY'S EXHIBIT NO. 49-R.

"Was the Adverse Decision of the National Labor Relations Board Justified?"

December 30, 1943.

Good evening, Ladies and Gentlemen. In previous broadcasts we have made frequent reference to a certain adverse decision of the National Labor Relations Board. The reasoning behind that decision is quite interesting, revealing, as it does, a new and unwarranted concept of the meaning of the clear wording of the Wagner Act. Of much greater importance, the decision stands as an outright denial of one of the most important constitutional rights of every citizen of this country. It is almost inconceivable that any such denial of fundamental rights could be made by government officials at the very time when we are engaged in a bitter war to preserve those rights; a war to the death with evil forces who seek to wreck our American concept of life, liberty and the pursuit of happiness. Yet such a denial of rights has been made. For these reasons we foremen feel that it is high time that we discuss this far-reaching N. L. R. B. decision.

The National Labor Relations Board is composed of three members, the chairman, Harry A. Millis, and his two associates, Gerard D. Reilly and John M. Houston. These three men conducted a hearing last April in the matter of the Maryland Drydock Company and Local No. 31 of the Industrial Union of Marine and Shipbuilding Workers of America. All interested parties were afforded full opportunity to state their cases and in May, 1943, the Board handed down its now-famous decision.

This widely-publicized decision was simply that we foremen are not appropriate collective bargaining units within the meaning of Section Nine B of the Wagner Act. However, the ruling was not unanimous. Two of the Board Members, Mr. Reilly and Mr. Houston, were responsible for it; one, the chairman, Mr. Millis, voted against it. Both the

majority and the minority opinions with their written analysis and conclusions are a matter of record.

Now what position had the N. L. R. B. taken prior to their May ruling on foremen's rights to bargain collectively? You may be surprised to learn that in two separate hearings, in the matters of Union Collieries and Godchaux Sugar, they had ruled that the foremen did constitute an appropriate collective bargaining unit. This new Maryland Drydock Decision, therefore, was a complete reversal of their previous stand.

In denying the petition of the union to designate Maryland Drydock foremen as appropriate collective bargaining units, the two Board members sought to justify their action by the following statement, quote: "The petitioning union relies on the authority of the Union Collieries and Godchaux Sugar cases. An examination of the majority opinions in these cases reveals that they were not based on the view that units of foremen were desirable or salutary or would effectuate the purposes of the Act, but solely on the legal premise that supervisors were necessarily employees within the meaning of the Act and therefore constituted a unit appropriate for the purpose of collective bargaining within the meaning of Section Nine (B)," End quote.

Now what does Chairman Millis declare in rebuttal to that statement of his associates? Here are his words. We quote: "The assertion that the majority's findings of supervisory units in those cases were based solely on the legal premise that supervisors were necessarily employees within the meaning of the Act is plainly not correct. The majority in those cases (Union Collieries and Godchaux Sugar) found not only that they were employees, but, as the opinions expressly state, that the units there found were appropriate within the meaning of Section Nine (B), that they would insure to employees the full benefit of their right to self-organization and collective bargaining and otherwise would effectuate the policies of the Act." End quote.

Company's Exhibit No. 49-R

The two Board members then proceed to further explain their harmful ruling by claiming that the language of the Act is broad and that supervisors are not mentioned among classes of employees specifically named as not being covered by the Act.

Our comment. What right has the National Labor Relations Board to decide that Congress didn't know what it was doing when it wrote the Act? By so doing, the Board attempts, in effect, to nullify our whole democratic system of law making. Aside from the sinister aspects of such assumption of power, the whole action is illogical, for it would permit two men of any three-man board to interpret any law as they see fit.

Chairman Millis had the following to say in his opinion. We quote: "Concededly, the Act does not prohibit establishing units of supervisory employees, and as the majority points out, there is nothing 'in the committee reports or in the debates in the House and Senate which would indicate that this specific problem was ever considered by the Congress.' It follows, therefore, that it is within our power to find that units of supervisors are appropriate. Adherence to the mandate of the Act consequently requires us **'in each case'** to decide the appropriate unit with due regard to the statutory tests, which it is our duty to apply, for effectuating the broad policies of the Act and insuring full self-organizational rights to employees. Manifestly to engraft upon the Act an amendment which denies to a substantial segment of employees as a class the protection vouchsafed therein to all 'employees' is not within the permissible bounds of administration discretion. It is administration legislation." End quote.

Our comment. There are over five million foremen in this country, working in many diversified industries as employees. And yet, as Mr. Millis says, the other two members of his Board don't hesitate to attempt to engraft an amendment upon the act which would deny us foremen the protection to which we are obviously entitled within the meaning of the act.

Company's Exhibit No. 49-R

These two Board members dwell at great length in their written opinion on the danger to industry of allowing foremen to unionize and bargain collectively.

Our comment. The real danger lies in continued denial of our constitutional right. Right today harmful friction exists in many plants between employers and their foremen, primarily due to the refusal to permit foremen to bargain collectively. Since last May, this strife has grown in intensity to the point where it has already resulted in four strikes in three different plants; strikes which we were absolutely unable to prevent. We have repeatedly stated that all we ask is fair play within the framework of the laws of our nation, and have proved our desire to be fair by urging our members to return to work, when the War Labor Board promised to hear their troubles. They kept their promise all right; heard our factual evidence; and then did precisely nothing about it. Is that "do-nothing" method of adjusting our problems supposed to make us happy? After all, we foremen pay taxes and are doing our share—yes, more than our share—toward winning this war. We deeply regret any harm that our work stoppages have done to the war effort, for we too have everything at stake in this war, but there is a limit to what we, or any other self-respecting Americans, can take in the form of unfair treatment from employers, even during wartime. Our boys in the armed services, many of whom are sons or brothers or close relatives of us foremen, are risking their lives to retain our freedom and way of life. We foremen, their relatives on the home front, don't feel that we are doing them a favor if we ignore any moves made during their absence which might result in the loss of the very rights and privileges for which they are fighting.

Chairman Millis of the N. L. R. B. wrote an intelligent and comprehensive opinion about the claim of his fellow Board members that it would be dangerous to industry if we foremen were authorized to bargain collectively. We now read further from the written opinion of Chairman Millis. Quote, "The majority fears the possible

harmful effects of organization and collective bargaining by foremen, in 'dangers inherent in the commingling of management and employee functions.' They foresee disruption of 'established managerial and production techniques.' and a 'possible restrictive effect upon the organizational freedom of rank and file employees.' We are told that it 'is not necessary to elaborate at length on these points,' apparently because they are so self-evident. We are not referred to any data which demonstrate the 'inherent' dangers, the 'disruptive' influences, or the 'possible restrictive effects' which are present in, or will flow from, the recognition of supervisors as appropriate bargaining units. In an effort to discover these dangers envisaged by the majority, I have examined the history of the trade union movement and testimony recently given before the committee." End quote.

What Chairman Millis learned when he studied labor history regarding foremen, makes it difficult for anyone to understand the basis for the dire predictions of the two Board members. We now give you the findings of Mr. Millis, quote, "Organization and collective bargaining by supervisory personnel have long been accepted in the maritime and railroad industries, in the former for more than forty years. The three leading maritime unions of licensed officers in 1941 had a reported combined membership of thirteen thousand, and their agreements covered in 1939 about thirty-eight percent of salt-water merchant marine tonnage. Although it is common knowledge that the licensed personnel aboard ship exercise substantially more powers as representatives of management than the ordinary foremen in mass production industries, I find no discussion in labor relations literature to indicate that serious issues have arisen from their recognition for collective bargaining purposes. With respect to the railroad industry, there are purely supervisory unions and unions which represent supervisors and their subordinates but in separate bargaining units. The National Mediation Board has recognized the right of these employees to representation; their organization has raised no unusual problems. If the granting of collective bargaining rights

to supervisory employees in the railroad industry has proved unworkable, one would suppose that the Railway Labor Act would have been amended to exclude 'subordinate officials' from its coverage. Why is not the experience in these fields persuasive that a parallel development, within the framework of the Act, is feasible in the mass production industries?'' End quote.

Because of the unfortunate, temporary ruling of the National Labor Relations Board, many of you unorganized foremen may have the mistaken impression that you have no right to become members of our association. We assure you that the Foreman's Association of America is a legal organization in every respect; one which you should be eager to join, for we offer the one sure hope of a satisfactory solution for your pressing problems, such as adequate pay, working hours and job classification. We invite you to come in and talk it over, to learn more about us. Eight thousand supervisors have done so in the past six months and now the whole twenty thousand of us are carrying on a militant campaign for recognition of foremen everywhere as appropriate collective bargaining units. Truly, where there is unity there is strength. May we take this opportunity to wish all of you the best of luck in 1944. Thank you.

COMPANY'S EXHIBIT NO. 49-S.

Will the Adverse Decision of the National Labor Relations Board Stand?

January 6, 1944.

Good evening, Ladies and Gentlemen. How two members of the three-man National Labor Relations Board suddenly discovered that they had the authority to shut off foremen from the exercise of their constitutional rights, is difficult for us to understand. We use the words, "suddenly discovered," because prior to last May the Board had ruled in the cases of the foremen of both the Union Collieries and Godchaux Sugar that foremen did have the right to bargain collectively with their employers. Yet two members of the N. L. R. B., Gerard D. Reilly and John M. Houston, were responsible for a complete reversal of the Board's previous rulings, when they handed down their adverse decision in the matter of the foremen of the Maryland Drydock Company last May. As we pointed out, however, in last week's broadcast, this widely-publicized ruling was not unanimous, for it was opposed by no less an authority than Harry A. Millis himself, who is the chairman of the National Labor Relations Board.

In his dissenting opinion, Mr. Millis termed the action of his two associates as administrative legislation. And no wonder! Any impartial individual who will read the crystal-clear wording of Section Nine B of the Wagner Act will agree with Chairman Millis in his contention that the Board exceeded its authority when it made the unwise and unwarranted decision that foremen do not have the right to bargain collectively.

The National Labor Relations Board is set up to administer the terms of the Wagner Act. This is the sole reason for its existence. Regardless of what any one or two Board members think of the wisdom of Congress in passing the Act, or the way Congress worded its terms, the

plain duty—indeed the sworn duty—of these government officials is to be guided by, and abide by, the written terms of the act. What else?

Now Section Nine B of the Wagner Act isn't any jumble of the English language. Here is what it says, quote, "The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the Employer Unit, Craft Unit, Plant Unit or subdivision thereof." End quote. What is so complicated about that? It simply states that the Board shall decide, in each case, which unit is appropriate for collective bargaining. There is not one single word contained in the clause which delegates, or even implies, any authority whatever to pass upon whether any one group of employees does or does not have the right to bargain collectively. And yet the two Board members, if you please, twisted the meaning of that clause around, somehow, to justify their fantastic ruling that has temporarily deprived us foremen of our legitimate rights under the Wagner Act. By their presumptuous action they have served notice on Congress that they don't believe Congress really meant to use the words written in Clause Nine B. If Congress had wanted supervisors to be excluded from the benefits of the Act, surely they would have included such a proviso. In fa you may be surprised to learn that there is a clause in the Act which specifies that certain workers in named occupations are not eligible to bargain collectively. Here is that portion of the Act, quote, "The term 'employee' shall include any employee, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse." End quote.

From a strictly legal viewpoint, therefore, we foremen claim that this unfair decision is absolutely unconstitutional and, if necessary, we will go to the courts of the land to prove it.

Company's Exhibit No. 49-S

But there is far more involved in the action of the N. L. R. B. than legality and constitutional rights, important as those considerations are. This unfortunate ruling has fanned into a dangerous blaze the smouldering strife that has existed for the past few years between foremen and top management in large numbers of plants in industrial areas. The trouble will not die down of its own accord. The only way it can be corrected is by the immediate restoration of the foreman's right to bargain collectively with his employer through channels of his own choice.

In his minority dissenting opinion Chairman Millis of the N. L. R. B. had this to say, quote, "In reaching its conclusions, the majority fails to give proper weight to the distinction between the two essentially different aspects of the position of foremen. On the one hand, they are agents of management, carrying out (although not formulating) management policies in the plant, mine or shipyard. As such they act for management at the first step in the handling of grievances of rank and file employees; but they do not, in most cases, make decisions on grievances except in minor matters. They have no active part in the collective bargaining conferences between management and the union or rank and file. In fact, one of their grievances is the lack of provision for conferences between management, foremen, and men on problems affecting all three groups. On the other hand, they are employees, in groups running into hundreds and even thousands in the great war industries, with serious problems of their own, as employees, in their relations to the management. It is these problems, not whims, which have led to the current movement by these men for self-organization and collective bargaining. Parallel movements are found elsewhere, as in Great Britain for example." End quote.

Then Chairman Millis continues his statement by commenting on the reasons advanced by employers as to why we should be barred from our lawful right or collective bargaining. We now refer again to his written opinion,

quote, "The employers' case against foremen's organization and collective bargaining, in addition to the fallacious claim that supervisors and management and not employees, repeats many of the arguments formerly used by anti-union employers against the organization of rank and file employees in these same industries. It is said that supervisors have no need for collective bargaining, that they can get individually anything they could obtain through belonging to a union, that they advance on individual merit. It is said that if organized, they would no longer perform their duties properly, and that there would be a serious threat to production, even chaos. The word-picture of foremen at the conference table is difficult to recognize." End quote.

Not much of interest could be added to that progressive factual opinion, but his final conclusions should be food for thought, especially among those employers who have carried out, and are still waging, such an intensive campaign in order to crush our association. In summing up, Mr. Millis said, "I conclude that supervisors in mass production are a group of employees whose right to organize and bargain collectively under the protection of the Act should no more be denied than that of any other group of employees. The policy established by the majority attempts to prevent difficulties from arising through foremen's organization, by denying foremen's organization the protection of the Act. This is a policy of negation, which does nothing towards a constructive solution of the real problems of the foremen. Of course, foremen, as employees, have the right to organize and to seek recognition. Perhaps many employers will regard it as wise to grant this recognition. Insofar as such voluntary recognition is withheld, foremen must "grin and bear it" or resort to the use of their economic power, an alternative which the Act was meant to discourage. But whatever may happen, any attempt to frustrate a legitimate desire for self-organization and collective bargaining by such groups can only be harmful to the cause of good industrial relations and efficient production. Indeed, denial of the

right to bargain collectively under the Act is likely to cause foremen, "forgotten men," with their problems not threshed out, to suffer more in loyalty and to become more militant than would be the case if they were allowed to bargain under the Act and the dire predictions of the majority proved to have substantial foundation in fact, as I am convinced by observations and considerable experience they do not have. In a democratic society good industrial relations and efficient production must depend upon well-informed, self-respecting, and mutually cooperative relationships between the three groups directly involved in production—management, supervisory employees, and rank and file workers. Self organization and collective bargaining by supervisors may contribute to the conditions necessary for good relationships and increased production. It is not impossible that employers may discover (as many of them have in the case of rank and file organization) that organized foremen, with responsible leadership and met by their managements in a constructive spirit, can be a positive force for good in industry." End quote.

How true! But the great majority of manufacturers don't seem to realize it. During Nineteen Forty-three the National Association of Manufacturers and the Automobile Manufacturers Association did everything in their power to break us. Only last March, under the leadership of C. E. Wilson, President of General Motors, they went to the extreme of backing up the un-American Smith Bill in testimony before the House Military Affairs Committee. Mr. Wilson spearheaded the parade to Washington and his testimony, combined with the testimony of a great number of prominent employers who journeyed to the Capital from all over the country, hit the front pages everywhere. The vicious Smith Bill was aimed directly at us organized foremen and, had it passed, it would have been an actual crime, punishable by law, for any foreman to belong to any union. Imagine that! However, we not only rode out that storm, but our membership leaped as a result of that unsavory attempt on the part of General Motors and other

corporations to legislate away the constitutional rights of some five million foremen in America.

In all fairness, though, we must give credit where it is due. All corporations aren't alike. For example, the officials of the huge Ford Motor Company have recently agreed to meet with the officers of the Foreman's Association of America in order to work out a practical program, whereby any grievances of their thousands of foremen will be handled in a proper manner. This preliminary action has been taken by Ford executives, despite the fact that the War Labor Board has not as yet accepted jurisdiction. Under the circumstances, we do not hesitate to pay tribute to the vision and far-sighted policies of Ford top management. Theirs is the kind of managerial leadership that has made America the hope of the world.

We assure you unorganized foremen that the Foreman's Association of America is a legal organization in every respect; one which you should be eager to join, because we offer you a genuine opportunity to secure satisfactory redress for your grievances such as inadequate pay, overtime without compensation and proper job classification. There are twenty thousand members who join me in extending a cordial invitation to you to learn more about us. Can you afford to ignore this chance to establish your right to bargain collectively? Thank you.

COMPANY'S EXHIBIT NO. 49-T.

Free Enterprise Is in Grave Danger.

January 13, 1944.

Good evening, Ladies and Gentlemen. A few days ago, some high government official, whose identity was not disclosed, said that strikes in this country are prolonging the war, because Nazi propagandists are using the strikes to bolster the morale of their people. The assertion of this anonymous higher-up received national publicity. Many prominent men commented on it, some approving, some disapproving.

No doubt, Goebbels is trying his best to capitalize on strikes and threats of strikes, but we question the value of this attempt to prop up German morale. According to several newspapermen, who were still in Germany during part of last year, most Germans no longer believe Nazi propaganda on any subject. Moreover, if there hadn't been a single strike in this country Goebbels would still be shoveling out an assortment of fantastic lies about our labor troubles, for the Nazis will broadcast any untruth if they feel it will help their cause.

Everyone knows that we have had a number of work stoppages, for whenever one occurs our newspapers headline it in bold type. The great majority of these strikes, however, have lasted only a few hours, but they always hit the front pages. As a result, many Americans have formed a bad opinion of labor unions and the attitude of workers as a whole. This is deplorable, because the cold figures prove beyond argument that the American workingman has done, and is doing, a real job, regardless of these sensational write-ups. Here are the facts. In nineteen forty-two only five one-hundredths of one percent of total working hours were lost due to strikes. In nineteen forty-three only fifteen one-hundredths of one percent of total working hours were lost. The reason for the slight increase last year was the time lost in the coal mine strikes. We submit

that these figures are the most conclusive answer to the unfair accusations being made against millions of honest workers who belong to unions.

It isn't much wonder, however, that people form bad impressions when they read that some two thousand workers, for example, walked off the job because of what looks like a trivial excuse. Unfortunately, the papers don't give the true underlying reasons, the real background of history of labor-management relations in each corporation where trouble bobs up, for that would require too costly a research for facts and too much space in these days of paper shortage. If the newspapers could do so, then you would learn that almost all walkouts are the immediate result of an accumulation of a flock of grievances over a period of time, rather than the particular grievance which promoted the action.

Ever since the Wagner Act was passed, giving workers the benefit of collective bargaining through their unions, there has been friction in most plants between employers and labor unions. This friction has now developed into a crucial fight, particularly between some of the larger employers and the unions.

Judging by their actions of the past two years it appears that there is a determined campaign being waged by many big industrialists to curb labor and deprive the rank and file of their hard-won rights, the most precious of which is the right to bargain collectively for their individual and group security. Though the figures and facts prove the extremely small effect on production of work stoppages, yet Congress passed the Smith-Connally Anti-strike Bill last year. Certainly the actual record of American labor in the war emergency did not justify the passing of that act; an act which became law largely because of the controversy between the coal mine operators and the miners. And how about us foremen? Just last March employers from all over the country, spearheaded by G. E. Wilson, President of General Motors, ganged up on us at Washington and spent weeks testifying before the House Military

Affairs Committee in favor of the Smith Bill; a bill that would have made it a crime for any foreman to even join a union. Although the vicious Smith Bill died in committee a great number of manufacturers tried hard to rob us of our constitutional rights. That's the point we are making! Then last May we, organized foremen became the victims of a surprising and unwarranted interpretation of the clauses of the Wagner Act, when the National Labor Relations Board ruled that we had no right to bargain collectively with our employers.

We foremen are of the opinion that these happenings reflect a short-sighted policy on the part of employers in general which may eventually wind up in the tragic loss of the very constitutional rights for which we are fighting a world war. If we employees, workers and foremen, should lose our right to bargain collectively then it will mean that America has adopted some form of state collectivism, similar in make-up, if not in name, to state fascism, the kind of government philosophy whereby a man exists as a servant of the state, rather than the state as a servant for the man. In that event there will be no free enterprise.

There is a sharp difference of opinion between us foremen and our employers on the true meaning of the words "Free Enterprise." Employers in general have taken the word "Free" in its widest meaning, namely, that a business enterprise must be allowed to develop and expand with all speed, without let or hindrance by government, and regardless of the social consequences that may follow from such unbridled license. Most employers still subscribe to that definition of free enterprise. That is what is at the bottom of their friction with the rank and file unions as well as with our foremen's association. It accounts for the present position of us organized foremen, who are now forced to fight for recognition as appropriate collective bargaining units within the clear meaning of the terms of the Wagner Act.

Now we foremen define free enterprise as a system of doing business whereby industry will be afforded every

opportunity and encouragement to expand and grow, and to start new enterprises, but not at the expense of the welfare of the worker. Profits are necessary to stimulate growth. Yes! But the profit incentive must not be permitted to take precedence over adequate wages, a reasonable work-hour week, decent working conditions and fair treatment for all. The dollar alone must not become the ruling passion of American industry, for that leads to ruthless exploitation of the employee. The Wagner Act became law because all too few employers recognized a moral obligation to their workers. Its enactment was a blessing to our country, for it saved America from internal chaos in the dark days of the depression.

At this particular time we dislike to bring up the factual history of the relations between management and labor, but it is necessary in order to make clear why management must change its outlook so that genuine free enterprise may be saved for our common good. Despite public utterances of prominent industrialists about collective bargaining being here to stay, the record indicates that they have grudgingly complied with the terms of the Wagner Act. That is understandable, because for fifty years management fought the labor movement by propaganda, by political power, by innumerable court injunctions, in the press, by lockout, by the use of state militia, by paid detectives acting as labor spies, by discrimination, by ruthless firing, by any and every means at its command. We wish we could say that all of these practices have been dropped since collective bargaining became an established procedure, but we can't.

It is estimated that there are over five million foremen in America. These men are just as anxious as any other Americans, to hasten the end of this war. To question their patriotism is an insult, for they have proven themselves, and don't have to apologize to anyone for their war record. Their sons and brothers and relatives are also in the armed forces. Yet these five million supervisors have been deprived of their constitutional right to bargain collectively with their employers within the framework of the labor

laws of this country. Many of them have no desire at the moment to exercise this privilege because they have been treated fairly by their companies. We know that. But there are vast numbers of us foremen who are active members of the Foreman's Association of America, because we do want to bargain collectively. We have valid grievances of long standing; grievances that, acting as individuals, we tried to adjust with our employers. But we failed.

Since we organized in August, nineteen forty-one, we have increased in both memberships and chapters far beyond expectation. You may be surprised to learn that we have expanded more rapidly since the adverse decision of the National Labor Relations Board was handed down last May.

As we have pointed out previously in these radio talks, most of our employers have fought us tooth and nail. They claim we have no rights. But—and this is important—they won't even admit we have any grievances! They state that if they want to discharge a foreman who, for example, has given his employer twenty or twenty-five years of faithful service, that they have every right to do so with or without cause; with or without a hearing. We are not using our imagination, ladies and gentlemen. Such dismissals have been common practice in recent years. For that reason alone, who can blame us for seeking protection against such obviously unfair treatment? But that isn't all! How would you like to take on the responsibility of foremanship in a war plant today, work plenty of overtime and yet never get a dime for the overtime? Or how would you like to have the same responsibility, work hard, and yet get paid less money than those whose activities you supervise? Such differentials in wages are also common where we work. These are just a few of the existing conditions which explain why we foremen are determined that we too shall enjoy the manifold proven benefits of collective bargaining. Our demands are not unreasonable or radical. Every American expects fair treatment. But, even though we realize that we are not getting a square shake, we are proud to tell you that we are not letting our prob-

lems blind us to the urgent necessity for getting out the production of war materials.

The very fact, however, that we foremen are on the receiving end of such exasperating treatment during wartime from our employers does not present an encouraging picture for the future of American industry. It isn't merely a matter affecting us supervisors, but of greater import, it is a matter of national concern that there are many employers, large and small, who adhere to such policies. Unless management changes its attitude, then we emphatically state that employers themselves are endangering the system of free enterprise.

We cordially invite you unorganized foremen to contact us for information. Our fight is your fight, too. We urge you to disregard wild rumors about the Foreman's Association of America, get the facts first hand, learn what we are doing for our members today, and then you will know why twenty thousand of us are sticking together, and why we will soon be twenty-one thousand strong. We've got something worthy of your consideration. Let's hear from you this week. Thank you.

COMPANY'S EXHIBIT NO. 49-U.

The Grievances of Foremen.

January 20, 1944.

Good evening, Ladies and Gentlemen. Most everyone has heard the expression, "All I know is what I read in the papers." Unfortunately, the newspapers don't print a detailed analysis of the underlying reasons behind labor trouble when a walkout occurs. That is understandable, for it would require a costly research to get the facts, and besides, space is too valuable in these days of paper shortage. If the newspapers could render such service, then you would learn that almost every work stoppage has its roots in plant friction, a series of disputes which eventually reach the boiling point.

We organized Foremen, members of the Foreman's Association of America, have received many headlines and much publicity in the daily papers, because of walkouts. We feel, therefore, that we should acquaint you with our grievances so that you will have a true picture of our position.

In previous broadcasts we have made frequent reference to a certain adverse decision of the National Labor Relations Board. The reasoning behind that decision is quite interesting, revealing, as it does, a new and unwarranted concept of the meaning of the clear wording of the Wagner Act. Of much greater importance, the decision stands as an outright denial of one of the most important constitutional rights of some five million Foremen. It is almost inconceivable that any such denial of fundamental rights could be made by government officials at the very time when we are engaged in a bitter war to preserve those rights; a war to the death with evil forces who seek to wreck our American concept of life, liberty and the pursuit of happiness. Yet, such a denial of rights has been made.

Company's Exhibit No. 49-U

The National Labor Relations Board is composed of three members the Chairman, Harry A. Millis, and his two associates, Gerard D. Reilly and John M. Houston. These three men conducted a hearing last April in the matter of the Maryland Drydock Company and Local Number Thirty One of the Industrial Union of Marine and Shipbuilding Workers of America. All interested parties were afforded full opportunity to state their cases and in May, Nineteen Forty Three, the board handed down its now-famous decision.

This widely-publicized decision was simply that we Foremen are not appropriate collective bargaining units within the meaning of Section Nine B of the Wagner Act. However, the ruling was not unanimous. Two of the board members, Mr. Reilly and Mr. Houston were responsible for it; one, the chairman, Mr. Millis, voted against it.

Now what position had the N. L. R. B. taken prior to their May ruling on Foremen's rights to bargain collectively? You may be surprised to learn that in two separate hearings in the matters of Union Collieries and Godchaux Sugar, they had ruled that the Foremen did constitute an appropriate collective bargaining unit. This new Maryland Drydock decision, therefore, was a complete reversal of their previous stand.

Since that unfortunate ruling, our employers claim that we have no rights. Moreover—and this is important—they won't even admit we have any grievances!

Here is one sample of how we Foremen are treated in some big plants here in the Detroit area, for example. During the five years from nineteen thirty-nine to nineteen forty-three, inclusive, one foreman worked a total of two thousand three hundred and eighty-five hours overtime for which he was not paid a dime. As a result, during nineteen forty-two for example, the last year for which earnings have been released, this foreman was paid three thousand five hundred and ninety-three dollars for the year, but—believe it or not—men working for him, men who

weren't Foremen at all, earned anywhere from fifty to three hundred dollars more than he received. Now this Foreman supervises the daily activities of one hundred and eighty-two employees, nine of whom are foremen. He has the heavy responsibility of supervising one hundred and eighty-two people, but earns less money than many of those working for him. Is that logical or fair? Should he be contented with his lot? And what about the nearly twenty-four hundred hours of overtime which he donated during the past five years while all those working for him, except assistant foremen, got paid for every minute of overtime? We assure you, Ladies and Gentlemen, this is no isolated or unusual case, but quite common indeed.

Most of us foremen are on salary, but the nature of our jobs makes it necessary for us to work anywhere from a half hour to an hour and a half overtime almost every day. In many of the big plants we are paid exactly nothing for this overtime. In these same plants, if we work six days in one week, however, we get thirty percent of our weekly salary for the sixth day, which amounts to time and a half for that sixth day. But suppose we work ten hours on the sixth day, do we get paid for the extra two hours? We do not! And what happens if a foreman works seven days in one week? Does he get double time for the seventh day, the Sunday, like every one else in industry? He does not! He works that seventh day at straight pay, because the company demands that he take a day off during the following week. By this subterfuge some huge corporations avoid paying him double time for that seventh day. In other words, their foremen are denied the opportunity of earning additional financial rewards that millions of American workers get for a seven day week. Is that equitable?

And when a foreman is forced to take a day off as a result of working a seven-day week, who do you think does his work for him on the day off? Why another foreman has to do two men's work on that particular day. That would be all right if the doubling-up foreman were

rewarded for the burden, but he gets exactly nothing. Is that fair?

A national holiday in America is supposed to be a holiday. Yet, when a foreman works on a holiday for some employers, he doesn't get paid for it. Is that fair?

Our employers claim that we foremen are a part of management, yet they do not keep the supervisors posted on policies. How can a supervisor be a part of management, yet not know his employer's policies?

In some huge plants, when a foreman approaches top management about any of his grievances, such, as overtime work without pay, he is reminded that he gets two weeks vacation with pay. In other words, eighty hours vacation with pay is a fair recompense in return for anywhere from three hundred to a thousand hours of overtime work during any year? That's like trading an apple tree for an orchard.

Again, if a foreman in some plants works, say four hours overtime, he is paid sixty cents for his supper. He therefore, gets fifteen cents per hour for the extra four hours.

Here is another situation, true of some plants. Let's suppose a foreman resigns or is discharged on the sixth day of a ten-day work period. His final check will show that he has been paid off for actual time worked, or on the basis of six-tenths of the money due him for the ten-day period, although he was hired on a monthly salary. Who benefits by such an arrangement? The foreman?

Recently we have been accused of direect sabotage of the war effort. There are several ways of hurting the war effort. One is the harm caused by acts of commission, such as a strike; another is the harm caused by acts of omission, or of not doing those things you know should be done in order to aid the war effort. Now when any corporation utterly neglects to correct trouble-breeding situations, it seems to us that the full responsibility for any

resultant blow-up rests squarely on the shoulders of those in control. Unhealthy working conditions, if allowed to continue, inevitably compel men to take such action as they think necessary to secure equitable adjustment of their pressing problems. In all fairness, we ask who is to blame for a work stoppage, the men who actually walk out in order to safeguard their fundamental rights, or the men who promote the walkout by ignoring the acute problems of their supervisory staff?

Here is another act of commission which has done untold harm to our war effort. The main function of the War Labor Board is to settle disputes between any employee, or group of employees, and the employer. Ever since this war started many of the big manufacturers have made it a practice to refer the most trivial of disputes in writing to the Board. In so doing they are within their legal rights, but thousands of these petty disputes could have easily been adjusted satisfactorily right in the plants of these manufacturers. The files of the War Labor Board are absolutely glutted with such petty cases. As a result, many grave disputes have necessarily taken months for the board to get around to them, because the board simply doesn't have the help or the time to cope with the vast number of cases before it. This whole situation has been directly responsible for innumerable walkouts. These manufacturers themselves are well aware of the disastrous effect of such a course of action. Is that patriotic?

When it comes to patriotism, we organized foremen have carried on despite trying conditions for over two years; besides donating thousands of hours of overtime work without pay. We can't help wondering how some of the big corporations would react if the government suddenly ruled that, "After this date you are to operate your plants without profit, even though other manufacturers will be permitted a profit." It would be interesting indeed to learn the true depth of the patriotism of their top executives if such a situation arose. And yet their foremen have been staying on the job under much more adverse circumstances.

Foremen are not radical crackpots. They don't have to apologize for their part in this war. What group of employers in all industry can match the tremendous number of working hours which they have donated to the war effort during the past two years? The great majority of them have sons or fathers or sisters or blood relatives in the armed services. They pay their share in taxes. Every single one of them has bought his share of bonds—many away beyond their share. Every one of them has worked hard in each bond drive to induce his own workers to buy all they could. An overwhelming majority of them have gladly given their blood to the Red Cross Blood Bank. Yet such men as these, your neighbors and mine, law abiding citizens, are accused of direct sabotage of the war effort, simply because their patience has reached the breaking point under the tough grind of jobs with long hours and short pay, combined with extremely unsatisfactory working conditions. After all, they're only human! Thank you.

COMPANY'S EXHIBIT NO. 49-V.

The Foreman in Modern Industry.

January 27, 1944.

Good evening, Ladies and Gentlemen. This job of being a foreman in modern industry is quite complex and exacting. Our problems have become so acute that they have had a serious effect on the industrial picture. For this reason we feel that we should acquaint you with the foreman's true position and the duties of modern foremanship.

Company's Exhibit No. 49-V

It is just a few years ago since companies rated their foremen on the basis of technical knowledge and ability to get out the production. In those days the ideal supervisor was one who could take charge of a department, step up production without adding more employees, then find ways and means to reduce the number of employees in his department without cutting the output. Any foreman who could work out that formula was rewarded financially. The employer paid off on results and was not concerned about how it was all accomplished.

Management paid little or no attention to the foreman's qualifications as a leader or handler of men; that was of secondary importance. In fact, we know of corporations where management actually favored, and rapidly promoted, the ruthless type of supervisor who knew how to be a Simon Legree. Only a handful of manufacturers tried to educate their supervisory staffs on the human relations angle and the value of good morale among workingmen, for the employer's interest centered on two things, production and profit.

The science of mass production, of manufacturing more and more for less and less, was the order of the day. The very nature of the system forced even the small plants to adopt the same driving tactics, the same discredited philosophy of rugged individualism, because it was a battle for survival of the fittest under the terrific economic pressure applied by big business. This system reached its highest degree of efficiency during the so-called boom era of the twenties following the first World War. Huge production at constantly decreasing costs was an unbeatable combination for yielding extraordinary profit, but, unfortunately, it was done at the expense of the workingman.

While all of this is well known, there are still many people who don't believe that such conditions really existed. One of the best proofs that we offer is to quote from an editorial which appeared last May in the Michigan Manufacturer and Financial Record. The write-up said quote, "Coming from a president of that august and highly conservative body known as the Chamber of Commerce of

the United States, the statement that the old style capitalism of a primitive freebooting period is gone forever strikes the ear with peculiar force at this time when all the world is bewildered by what is now and looks forward with misgiving to what may be. The remark was embodied in his speech before the recent annual meeting of the United States Chamber by Eric A. Johnston went on to say, 'The capitalism of complete Laissez-Faire, which thrived on low wages and maximum profits for minimum turnover and which rejected collective bargaining and fought against justified public regulation of the competitive process is a thing of the past.' Those who would turn back the clock of history in this respect are as unrealistic in their way as the addle-brained paper planners of our economic salvation." End quote.

When the Wagner Act became law and the workingman could protect himself against further exploitation by collective bargaining procedure, the attitude of management toward foremen in most industries changed radically. Through union contracts the rank and file set up machinery for adjustment of their grievances. The foreman, however, without benefit of union affiliation, had to depend upon his employer's sense of fairness to make adequate provision for him. But management failed to do so, with the result that the supervisor was left out in the cold. Each supervisor naturally did everything he could to adjust his valid grievances by individual discussion with his employer, but he got nowhere. Times had changed for the foreman, but it took some time for him to convince himself that, under the new order of labor-management relations, his employer felt no obligation whatever to accord him equitable treatment. That is why we organized the Foreman's Association of America. That is why we are now fighting so strenuously for official government recognition and reinstatement of our proper status as appropriate collective bargaining units wherever we work. Everyone knows that we are getting militant opposition at every turn, not only from our own employers, but from the whole membership of the National Association of Manufacturers, despite the clear wording of the Wagner Act.

Company's Exhibit No. 49-V

Our employers are in a very strange and contradictory position. On the one hand they claim we are a part of management, the key men of their plants and, therefore, we have no right to bargain with them as a group to protect ourselves against exploitation; yet on the other hand they go right along giving us the same dose of unfair treatment day in and day out. If we really are a part of management, then why aren't we being treated as though we were? That's a question that our employers ignore in their argument. Their whole stand is based upon an unwarranted and unjust interpretation of the Wagner Act regarding foremen; an interpretation which was handed down by the three-man National Labor Relations Board last May by a two-to-one vote. Another conclusive proof of the validity of our grievances is the rapid growth of our association in a little over two years. Is it logical to assume that over twenty thousand foremen, mostly in the Detroit area, would go out on a limb, form a mutual protective organization, pay dues, jeopardize the fruits of years of hard work, unless their true situation in these plants was such that they had been driven to take such drastic action?

But in spite of the fact that we have as much security as a duck in a shooting gallery; that we work thousands of overtime hours for nothing in most plants; that we can be fired without a hearing and without cause at the mere whim of any executive who has a sudden brainstorm; that a lifetime of faithful service rates as so much balderdash; that thousands of us earn less money than those whose activities we supervise; we repeat, that in spite of working upon such exasperating and adverse conditions, there are many demands made upon us. The personnel departments, training divisions and factory higher-ups in the plants where we are employed carry on an eldless campaign to inform us that we must keep production up; keep costs down; meet production schedules; watch quality; check rework; hold down scrap; practice and promote safety; take good care of equipment; encourage teamwork; build upmorale; correct absenteeism; keep accurate and detailed records of production and material; train or supervise

training of new employees; properly induct new employees; listen to complaints; pay attention to suggestions; answer questions; forget the clock; work overtime for nothing; keep the respect of everyone in a department and set a good example. We are constantly subjected to criticism from top management if we fail to measure up on any of those duties, yet we are supposed to do our best to meet these requirements of the job in the face of outright denial that we have the legal right to bargain collectively, and in the face of valid grievances of long standing for which we have not been able to get satisfactory adjustment.

When you consider these facts, plus many cases of discrimination against, and unfair discharge of, our members, it isn't hard to understand why we have become so fed up that we have walked off the job in a few plants during the past seven months.

Now, each time we have been involved in a walkout, the War Labor Board has asked us to return to work and promised action on our grievances. Each time they have so requested we have cooperated. And each time we have had action in the form of hearings but that is all we have gotten to date—just hearings—no decisions. By these pigeon-hole, "bury-the-evidence" tactics the War Labor Board has multiplied our valid grievances, for some of our employers have been greately encouraged to continue their unfair treatment of us foremen. They interpret the action of the board as approval of their managerial philosophies.

Now, we don't believe that the War Labor Board really wants to favor either the manufacturers or us. For them to take sides for any reason other than in the line of their clear duty in administering the law, would make a mockery and a farce of the labor laws of this country. All we have ever asked of the Board is that they give us fair hearings and decisions based upon the provable evidence. We get the hearings; we don't get the decisions. We have asked time and again, "Where are the decisions? When will you make them?" And we don't get definite answers. The situation has reached the stage where we have a perfect

right to wonder whether we are being given a ride on the merry-go-round.

However, we don't believe that the War Labor Board will permit this stalmate to continue, for it is obviously unfair to us, places the Board in a false light and, so far at least, favors the employers.

We foremen hate the idea of striking during wartime, for nearly every one of us has a brother or a son or some close relative in the armed forces. We are just as anxious as the next fellow to produce every plane and gun and tank and ship as quickly as possible. Our record in the war effort proves our patriotism. But we honestly feel that in fighting for the right to bargain collectively we are at the same time helping to protect the rights of all Americans within the clear meaning of the benevolent labor laws of this country. These rights have been challenged by big business. If we organized foremen of the Independent Foreman's Association of America don't safeguard them for the boys now overseas, just who will carry the banner? We never dreamed that industry would go to such lengths to deprive millions of Americans of their rights to organize and gain security on the job, especially in view of the history of the fight of the rank and file for the same rights, but it has happened. So we foremen are meeting the challenge with the firm conviction of a successful outcome, because law is law, no matter how the most expensive legal talent may try to twist its meaning.

You unorganized foremen, who may have had doubts of our unity and determination of purpose, have recently been given public proof that we are sticking together regardless of clever and powerful opposition. We urge you to give serious thought to the reasons why your own employer is bucking us so vigorously, especially if you have grievances. Could it be that he has no intention of giving you the security on the job to which you, like all other Americans, are entitled? We emphatically state that your one sure hope of protecting your rights is to join the twenty thousand of us who are fighting your battle for you. We need your cooperation. Thank you.

COMPANY'S EXHIBIT NO. 49-W.

"Who Is in the Right—We Foremen or Our Employers?"

February 3, 1944.

Good evening, Ladies and Gentlemen. Every time our employers refer to us foremen in the press or in hearings before the War Labor Board and other governmental agencies they state that we are a part of management. This assertion is a half-truth which sounds plausible if you are not familiar with the revolutionary changes which have altered the pattern of Labor-Management relations during the past few years. If any manufacturer wants to make good his claim that we are a part of management today, then he must prove that we still function on the job substantially as we did some years ago; that we have the same duties and responsibilities. This he simply cannot do, for a factual, impartial examination of the status of us foremen in modern industry readily establishes that conditions have changed radically for us, especially since 1936.

Let's take a look at the facts and find out how these new conditions came about. Before the Wagner Act became law, the foreman was definitely a part of management. In actual practice he was management, for he formulated policies, and was delegated genuine authority—the kind of authority that allowed him to use his own judgment and make his own decisions on most every problem connected with his department. He had the right to hire and fire, promote and demote, hear complaints and settle disputes. He also accepted responsibility for quantity and quality of production.

Then came the Wagner Act which provided the workingman with a practical procedure whereby he could protest his interests through the medium of collective bargaining. When the great majority of workers joined the big rank and file unions and signed contracts with employers, those contracts contained clauses which did away with much of the authority previously exercised by foremen.

Company's Exhibit No. 49-W

And rightfully so! Many supervisors, often without realizing it, were the right-hand men in a system of exploitation of the worker. It wasn't a question of how any foreman personally felt about the fairness or unfairness of managerial policies. The point is that the very nature of the set-up required that he carry out those policies, regardless of personal convictions, or else he didn't hold his job very long. Of course such an unhealthy condition had to go, and it did go under the force of wholesale unionization and the beneficial pressure of collective bargaining.

When this happened the foreman lost the power to hire and fire, to settle all grievances, to promote and demote and to hear complaints. These powers were taken over by employment departments which were expanded into elaborate personnel or industrial relations divisions.

Those are indisputable facts which back up our claim that management utters a half-truth when they say that we are a part of management.

Last May the three-man National Labor Relations Board handed down a temporary, though ill-timed and unwise decision when they ruled that we foremen did not constitute an appropriate collective bargaining unit. But the decision was not unanimous. The distinguished chairman of the N.L.R.B., Harry A. Millis, disagreed with the line of reasoning, advanced by his two associates, to justify their stand. In his dissenting opinion Mr. Millis wrote as follows, and we quote his exact words:

"In reaching its conclusions, the majority fails to give proper weight to the distinction between the two essentially different aspects of the position of foremen. On the one hand, they are agents of management, carrying out (although not formulating) management policies in the plant, mine or shipyard. As such they act for management at the first step in the handling of grievances of rank and file employees; but they do not, in most cases, make decisions on grievances except in minor matters. They have no active part in the collective bargaining conferences between management and the union or rank and

file. In fact, one of their grievances is the lack of provision for conferences between management, foremen, and men on problems affecting all three groups. On the other hand, they are employees, in groups running into hundreds and even thousands in the great war industries, with serious problems of their own, as employees, in their relations to the management. It is these problems, not whims, which have led to the current movement by these men for self-organization and collective bargaining. Parallel movements are found elsewhere, as in Great Britain for example." End quote.

Then Chairman Millis continues his statement by commenting on the reasons advanced by employers as to why we should be barred from our lawful right or collective bargaining. We now refer again to his written opinion, quote, "The employers' case against foremen's organization and collective bargaining, in addition to the fallacious claim that supervisors are management and not employees, repeats many of the arguments formerly used by anti-union employers against the organization of rank and file employees in these same industries. It is said that supervisors have no need for collective bargaining, that they can get individually anything they could obtain through belonging to a union, that they advance on individual merit. It is said that if organized, they would no longer perform their duties properly, and that there would be a serious threat to production, even chaos. The word-picture of foremen at the conference table is difficult to recognize." End quote.

Coming from Mr. Millis, who is the head of the National Labor Relations Board, we feel that his statement merits careful analysis by the "die-hards" of the employer group.

Now, when a foreman was a foreman in every sense of the word, it was customary to pay him on a scale that would make his job sufficiently attractive that he would try hard to be a good manager. But when he lost most of his authority this wage policy was dropped like a hot potato. Although the rank and file wages soared to a new high, the employer felt no obligation to keep the wages

of his supervisory staff in line. It wasn't long thereafter until thousands of us foremen were earning less money than those working under our supervision. That situation is quite common today in the plants where we work.

Wage inequities, lack of security, absence of procedures for adjusting grievances, overtime work and plenty of it without compensation; these are just a few of the many valid grievances which prompted us to organize our own independent association. They also explain why we fight so vigorously for restoration of our right to bargain collectively. We too want to protect our interests and promote our individual and collective welfare. Is there anything wrong with those all-American desires? Or are the manufacturers the only ones who should be permitted to look out for themselves?

We foremen are the one class—indeed the only class—of employees in American industry who have been shut off from the manifold benefits of the Wagner Act. Suppose our government were to suddenly declare that the Automobile Manufacturers Association, or the National Association of Manufacturers, must quit acting as a group to protect their interests. The wailing would be loud and long. Washington would be flooded with lobbyists and expensive legal talent protesting over such an unconstitutional and unwarranted dispossession of their rights. And yet, ladies and gentlemen, that is exactly what has happened to us foremen. And we are supposed to be contented with such un-American treatment! But that isn't all! Our employers, led by C. E. Wilson, President of General Motors, actually journeyed to Washington from all parts of the country just last March to attempt to put over the wildest piece of abortive legislation that has ever come up before the House Military Affairs Committee. Mr. Wilson, followed by a large number of prominent industrialists, all testified in favor of the Smith Bill—a bill which would have made it a crime, punishable by law, for us to even belong to a union, much less bargain collectively. They tried to slip it across under the guise of helping the war effort. Though the bill died in committee, its odor lingers on.

Company's Exhibit No. 49-W

Although we organized foremen have been putting up an aggressive fight for our rights as American citizens, we have not let our acute employment grievances prevent us from doing all we can to help end this terrible war in the shortest possible time. Recently an employer tried to smear our record by referring to our walkout as a deliberate attempt to sabotage the war effort. It is true that when working conditions became intolerable in that corporation's group of plants we walked off the job in protest. It is also true that when the war labor board asked us to return to our jobs and promised that we would get action on our grievances we complied immediately with the request, for all we want is fair play. No one could possibly influence over two thousand supervisors to take such drastic action as to strike in wartime unless they had been driven to do so by unfair treatment.

Our best answer to those who questioned our patriotism is to cite the war record of the members of the Foreman's Association of America. Here it is. At least fifty times during the past two years in as many plants we had every reason to walk off the job, but refrained from doing so, because our members placed the welfare of the soldiers and sailors ahead of their own. In the pages of our monthly association publication and at every meeting of our various chapters during the past two years we have repeatedly urged our members to buy bonds and to cooperate in the sale of bonds. In each of the plants where we work we foremen have sold millions of dollars worth of bonds to the folks who work under our supervision. We are working harder than ever to do our bit in putting this Fourth War Loan Drive over the top. Aside from bond purchases, thousands of us have helped organize groups of blood donors for the Red Cross. In addition we have yet to hear any of our members complain about the burden of heavy taxes. And we wish it were possible to total up all of the overtime hours that the twenty thousand of us have donated to the war effort on the job, for we doubt that any group, exclusive of other foremen, can match it. Roughly, we estimate that we have given some eleven million hours of plant labor in the past two years.

What has that huge gift meant to the boys on the firing line in terms of planes and tanks and guns and ships? And lastly, there are very few among us who have not had the privilege of bidding goodby to one of our own sons or brothers or other close relatives when they entered the armed services.

As for the purchase of war bonds we foremen feel that any sacrifice we might make to buy them is puny by comparison with what is being endured at this very moment by the men in service. How can anyone term the purchase of a guaranteed, interest bearing investment a sacrifice, when we know that our dollars are helping to make certain that we shall always enjoy our way of life in these beloved United States. Thank you.

COMPANY'S EXHIBIT NO. 49-X.

Why Does Industry Oppose Collective Bargaining for Foremen?

February 10, 1944.

Good evening, Ladies and Gentlemen: We organized foremen have been getting, and paying for, a liberal education from our employers during the past two years in the fine art, the questionable art, of erecting "public opinion" smoke screens, designed to becloud and confuse true issues. Fortunately, we find no necessity to adopt the same tactics in our justifiable fight for recognition of our right to bargain collectively under the clear-cut au-

thorization of the Wagner Labor Relations Act. We don't need any cards up our collective sleeve to present our side of the controversy, for we can offer plenty of solid proof to verify our position in industry; the kind of proof that has not folded up, and will not fold up, under close scrutiny from any quarter.

Nation-wide publicity has been accorded the arguments advanced by prominent spokesmen for the Automobile Manufacturers Associations and the National Association of Manufacturers in opposition to collective bargaining for foremen. Their official statements seem quite plausible, but they don't stand up very well under impartial analysis.

The first heavy barrage of so-called reasons why industrialists are trying to give us the business came out of Washington last March. The occasion was the widely-advertised introduction of the vicious Smith Bill before the House Military Affairs Committee. The big guns of industry—such men as C. E. Wilson, President of General Motors; C. C. Carlton, of Motor Wheel Corporation; R. J. Goldie, of Timken Detroit Axle Company; C. B. Randall, of Inland Steel, and many, many others fired the works at us, but used the wrong kind of ammunition, for the members of the House Military Affairs Committee were not sufficiently impressed with the weight of their arguments, especially after hearing the rebuttal testimony of us foremen, to forward the bill on to the House for discussion and disposal. So the Smith Bill was pigeon-holed, despite the intense, unified drive of the manufacturers to jam it across. Its death in committee renewed our faith in the democratic processes of the legislative branch of our government.

Since that time, however, spokesmen for the employers have been using the same pattern of arguments that were put up before the House Military Affairs Committee. We ran into them again last May when we debated our controversy on a coast-to-coast radio hookup on the "Wake Up America" program, which debate was also published

in over six hundred newspapers. They were repeated in Time magazine, in industrial publications and in the write-ups of newspaper columnists, as well as in comments recently given to the papers whenever our trouble has flared up. Obviously, they have become standard equipment for want of something better, so let's examine these old saws to find out whether they really cut wood.

An outstanding favorite is the statement that it is fundamental that a man cannot serve two masters. This one has its root in a two thousand year old statement in the Bible from the Book of Matthew, which says, "No man can serve two masters; for either he will hate the one and love the other, or else he will hold to the one and despise the other." Our comment. This "serving-two-masters" catch-phrase shows how easy it is for anyone to read the Bible, pick out certain writings, then twist them around to suit his convenience. It is generally accepted that the original statement in the Bible about serving two masters was made in order to warn all humanity that it is impossible to serve both our Maker and the devil at the same time. In our estimation, it is a far-fetched and abortive misuse of the meaning of the words of the sacred book, when employers quote it as backing up their concept of why we foremen have no right to belong to our own association and bargain collectively. We too can find a perfect answer in the same Bible if we want to quote from the Scripture wherein it states that we should render to Caesar the things that are Caeser's and to God the things that are God's. But we prefer to confine our remarks to a realistic discussion of conditions in the plants. If any man cannot serve two masters in industry, then how about the workingman who pays dues to his union, yet works for an employer? The record, however, of American workers, both before and during this war, proves conclusively that a worker can produce far better under union protection than without it. Based upon that proven production record then why cannot we foremen, who are in desperate need of the protective benefits of collective bargaining, also produce better under similar conditions? The answer is that we can, for in some factories where our asso-

ciation has been responsible for ironing out problems of our members with management, the result has always been noticeably beneficial in the work of the foremen. They reacted by taking a new interest in their work, which in turn showed up in better quality and production. Did you know that organization and collective bargaining for foremen have long been accepted in the maritime and railroad industries? If the granting of such rights to their supervisory personnel for a period of some forty years had proved unworkable, then does it follow that the great maritime and railroad corporations could have operated so efficiently all those years? And finally, if we were to apply the same line of "two-masters" reasoning to all associations, how can an employer be an active member of his national association of manufacturers, yet look out for the best interests of his own company? It is absurd to say that he can't, yet that is what the manufacturers' claim regarding all unions when they use the "two-masters" argument.

Another common reason advanced by our employers to show why we should not be permitted to bargain collectively is that the authors of the Wagner Act never intended that foremen should do so. In other words, Senator Wagner, the author of the act, did not mean to extend its privileges to foremen. Didn't he? Well, Senator Wagner himself has gone on record that he definitely did mean that all employees, including foremen, should enjoy the benefits of his act. Why then do manufacturers presume to say that he didn't mean it in the face of his own statement? The act does not exclude foremen from organizing and bargaining collectively. In fact it doesn't mention foremen. It clearly states that its provisions apply to all employees in industry, but you would imagine that we owned and operated the plants when our employers discuss the status of us foremen. And how about the members of Congress who passed the act? Is it possible that that intelligent body of men didn't realize what they voted for? We foreman can't go along with that form of crystal-ball gazing!

Company's Exhibit No. 49-X

But the prize package of all the arguments is the one heard most frequently, the one which says that we foremen are a part of a management. Now if we foremen really were a part of management, just as foremen were some years ago, and if we were treated as a part of management, then there would never have been a Foreman's Association of America. The best answer we can give to disprove management's contention in this regard is that over twenty thousand of us are now engaged in a militant campaign for the right to handle our problems as a group. If we are part of management then why are we convinced that our one chance to get redress for grievances lies only in collective action? The duties of our jobs readily establish, however, that we are just employees in the strictest sense of the word. We carry out the policies of management, but we do not formulate those policies. It makes no difference whether we do or don't agree with either the wisdom or fairness of those policies, it is still our job to carry them out. While it is true that we act for management at the first step in handling grievances of rank and file employees, still we are not allowed to make decisions on such grievances, and this is true even of minor matters in most cases. We take no part in collective bargaining between management and the rank and file union. In addition we don't have the right to hire and fire employees.

There you have the published explanations given out by our employers in support of their determination to deprive us of the manifold advantages of collective bargaining. We assure you, however, that there are other reasons which actuate the manufacturer. These stem from the discreditd philosophy of rugged individualism, a term frequently used to belittle the collective endeavors of employees to get a square deal as something un-American and unworthy of the example set by the rugged pioneers of our country. Our employers never admit any moral obligation toward us foremen. They don't believe that they should institute progressive policies which would provide a sense of security to any foreman, for example, who has given them twenty years of faithful service, the

best twenty years of his life. On the contrary they insist that they have the right to discharge such a man with or without cause, with or without a hearing if they so choose. If any plant manager demotes or penalizes a foreman because he doesn't like the color of his eyes, or because of any personal prejudice, why that's perfectly in order. Nor do our employers mention that most of them require thousands of us to donate millions of hours of overtime work without pay. Nor do they ever admit that we have any valid grievances. All is lovely behind the scenes, according to them, and we foremen are some peculiar breed of ingrates who have organized merely because unionization is a modern disease which has infected us by contact with rank and file unions. No constructive effort has been, or is being made, by management, to correct managerial policies which have forced us to unite in self defense. Instead, they prefer to attack our association, attack the visible effects of their inequitable treatment, and seek by intimidation and through expensive legal counsel to crush the Foreman's Association of America. And we foremen are supposed to lie down and play dead when confronted with these tactics. Such are the fruits of rugged individualism, the philosophy that, over a period of years, sowed the seeds of wholesale unionization of American industry.

We cordially invite you unorganized foremen to contact us for information about our association and what it can do for you. You know, just as all other foremen know, that we are now on the short end in the industrial picture. We ask you to consider seriously how much chance you have, acting on your own, to protect yourself from exploitation now or in the future. If you will join up with the twenty thousand of us in this battle for the same legal privileges that the rank and file now enjoy, then we are positive that our combined efforts will make certain that you too will get what you are entitled to. Thank you.

Company's Exhibit No. 49-Y

COMPANY'S EXHIBIT NO. 49-Y.

When Foremen Bargain Collectively, What Then?

February 17, 1944.

Good evening, Ladies and Gentlemen. Instead of asking what the effect will be on industry generally when we foremen regain the right to bargain collectively, perhaps it would be better to put it this way—What will happen to industry if we are denied this privilege? The unfortunate and illogical ruling of the National Labor Relations Board last year to the effect that we do not constitute an appropriate collective bargaining unit in the plants where we work has only served to make a bad situation much worse. For this reason it must be corrected.

The job of a foreman in a factory today is obviously different from what it was a few years ago. The foreman used to have the power to hire and fire; he doesn't exercise that power nowadays. He used to formulate policies; he doesn't do so now. Besides, much of his original authority has been curtailed in many other ways.

These changes are the result of wholesale unionization of the rank and file which altered the whole pattern of labor-management relations. The great unions demanded and got collective bargaining procedure by virtue of the beneficial terms of the Wagner Labor Relations Act. When this happened authority to negotiate contracts and establish workable machinery for the handling of grievances had to be centralized in some way. Under the circumstances, it was necessary and advisable to transfer some authority from the supervisory staff, for each foreman could hardly perform the duties of his job, and at the same time conduct both contract and grievance negotiations. So a new kind of department, called the Personnel or Industrial Relations Division, took over.

Most of the directors of industrial relations who headed these new departments started out with great ambition and high hopes. The field was comparatively green so they weren't hampered by precedent. They tackled the job

with the determination to show management that their divisions, acting on their own, could control and build up the morale of the rank and file by use of a grandiose technique, which we foremen call "mumbo-jumbo." In their opinion, the foreman would only have a limited effect on the morale of his workers, because, under the new order of things, he had lost the power to hire and fire, promote and demote, and so forth. Therefore his influence was small indeed. So they proceeded to sell the big employers on the whole idea by cooking up spectacular methods designed to make all employees happy in their work. They introduced such things as industrial motion pictures, slide films, elaborate house organs, service buttons, loud-speaker systems, a flood of booklets and bulletins on every conceivable subject from recreation to sanitation and innumerable other ideas of similar character. They were the trail-blazers of a new era in industrial relations, based upon a so-called modern, high-powered business philosophy—so they thought! They invented strange meanings for the word psychology—so they thought! Why, in no time at all they were going to smother unionism by dazzling the worker with this technique, of breath-taking "mumbo-jumbo"—so they thought! But as everyone knows, friction between management and labor, as well as strikes, did not decrease. They increased under the methods of the "mumbo-jumbo" experts who failed miserably in their attempts to foster labor peace and soften up the unions. About the only thing they succeeded in doing was to force old-time employment managers to adopt the title of personnel director and rush to night schools in order to acquire the technique of the "mumbo-jumbo" boys.

Most of these personnel directors were college men of the "brain-truster" variety; men who had no practical or actual experience in shop problems. They had sheepskins and college degrees ranging from A.B. to Ph.D. to B.S., all of which gave them an exaggerated and unwarranted confidence in the products of their imagination and wishful thinking. Because their conception of human relations was founded upon theory, rather than fact, they overlooked the fact that the people with whom they were

dealing were just human beings, not experimental guinea pigs. They forgot that plain Joe Doakes still put on his pants in the old-fashioned way—one leg at a time.

Now we foremen fully realize that the whole matter of relations between management and labor did become extremely complex and delicate with the advent of mass unionization. We knew it from the reactions of our workers in the shops.

We also recognized that our employers would be obliged to discard previous driving tactics and institute progressive plant-wide policies which would create mutual respect and understanding. But the new "mumbo-jumbo" system ignored fundamental facts, and attacked the trouble by putting the cart before the horse with the disastrous results that we see all round us today.

Recently, however, employers are waking up to the fact that the morale of employees can be no better than the morale of the foremen. After all, when John Doe is hired by a company, he is assigned to work under some foreman. If he likes his foreman then he will enjoy his work. But if he doesn't like his foreman, then the odds are that he won't like any part of the company either. Anyone who disputes that simple fact doesn't know factories.

Now let's suppose that the foreman himself is dissatisfied with the conditions of his employment. With that frame of mind how can he possibly maintain good morale among those under his supervision? Whether he mentions it or not his workers sense his attitude and, inevitably, the morale of the whole department suffers a letdown.

We organized foremen have many valid grievances in the plants where we are employed; grievances that we are trying hard to adjust. But since the adverse ruling of the N. L. R. B. last May most of our employers have not only sat back and done nothing constructive to remedy the situation but have actually carried on a shameful campaign to try to permanently bar us from the manifold benefits that rightfully belong to us under the crystal-clear wording of the clauses of the Wagner Act. As a consequence, this "treat-em-rough" policy on the part of our

employers hasn't helped our morale one bit. This deplorable and absolutely unnecessary condition has in turn affected workers and lowered their morale. Although the record of production of war materials has been good, yet we foremen are positive that it would have, and could have, been much better had we foremen been given equitable treatment.

By contrast, prior to last May, when we had the right to organize and bargain collectively, the morale of us organized foremen was very high, for we knew that we could look for satisfactory solution of our problems within a reasonable time. Moreover, in those plants where we had signed agreements with management, both quality and quantity of production noticeably improved.

The principal reason why we organized the Foreman's Association of America a little over two years ago was because we foremen had explored and exhausted every means at our command, each foreman acting as his own negotiator, to secure redress for genuine grievances. But we failed, so we turned to collective action, the proven method. What is more, we foremen are thoroughly convinced that our one hope of getting a square deal lies in collective bargaining.

As matters stand today, the best worker in the shop is refusing promotion to a supervisory job, because he is well aware of the headaches that go along with the promotion. And he is correct in his line of reasoning. Why should he accept a so-called promotion which will cost him, first of all, the security which he now has as a union member? Why should he take a job which forces him to work plenty of overtime gratis, when he can stay where he is and get paid for every minute of overtime work? Why should he throw away his seniority rights to shoulder the responsibility of foremanship and run the risk of being discharged at any time on the mere whim of some touchy plant manager? Why should he kick over the friendships he has formed among his fellow workers? Why should he do all this only to discover that from the day he becomes a supervisor he will likely be making less than he did as a worker?

Company's Exhibit No. 49-Y

It should be quite clear to all manufacturers, therefore, that when foremen do regain the right to bargain collectively, it will be of greatest benefit to the employers themselves, for it will do away with the causes of the present strife between us and them. When that day comes—and it will come— then a promotion to the job of foreman will really be a promotion, something worthwhile striving for, something attractive to the best brains on the production line, a real incentive to do better work and get ahead. There will be a marked improvement in the morale of all workers. Production will increase and quality of workmanship too, all of which means lower costs and the ability to compete for business in the open market.

Many manufacturers are laboring under the mistaken impression that the right to bargain collectively will hamper the ambition of the better foremen, that they won't care to improve themselves or go on to the top. That is an absurd notion. We foremen only seek to correct such exasperating conditions as basic wage inequities, lop-sided job classifications, the unfairness of requiring us to work overtime for nothing when all other factory workers get paid for it, the unfairness of holding the club over our heads of possible discharge with or without a cause or a hearing and regardless of faithful years of service. Finally we demand reasonable security on the job. Is there anything wrong with that? We say to you employers, "Give us decent treatment and collective bargaining and you are bound to reap the benefits in both labor peace and added profits."

We have been very pleased with the many inquiries we have been getting from you unorganized foremen about starting chapters in the plants where you work. As a result many new chapters will soon be added to our growing total. We are fighting your fight as well as our own and we urge you to join us so that you too can help in this crusade for our rights. Our association offers you many advantages which you can find nowhere else in America. Drop us a line or pay us a visit. We will be happy to give you any information you want. Do it now. Thank you.

COMPANY'S EXHIBIT NO. 49-Z.

"Should Industry Clean House?"

February 24, 1944.

Good evening, Ladies and Gentlemen. This war, with all its heartaches and headaches, presents a made-to-order opportunity for the prophet of gloom to go into high with discouraging predictions. Hardly a day passes but what some self-rated specialist in history and the trend of events speaks in vague terms and generalities of the revolution to come and the changed world when victory is ours. He describes revolution loosely as something inevitable, but he doesn't specify whether it will be of a political, governmental or social nature, because he doesn't know any more about the subject than the man on the street. He does manage, however, to sow the seeds of pessimism and doubt to the extent that many people are now tremendously worried over things that may happen: such things as inflation, post-war unemployment, loss of savings, post-war depression, the end of democracy and freedom as well as war with Russia, just to mention a few.

No sane person can deny that we are in trouble up to our necks. None of us knows for certain what the future holds, but we can gain nothing by listening to the visionary calamity howlers.

Still it would be the height of folly to ignore any harmful conditions that do exist in America; conditions which, if not corrected, may well result in disaster in the long run.

As a direct consequence of the lack of vision and the short-sighted policies of many employers, American industry is in a tight spot today, and only the fact that we are at war keeps the situation from getting out of control. We refer to the explosive problem of human relations in our factories, one which has reached a delicate stage indeed, far more so than the average person realizes. This problem must be faced squarely, and dealt with vigor-

ously, if we are to look for a satisfactory solution in time to prevent trouble. Impartial investigation will readily verify our estimate of the importance of this problem, and that it is not a figment of our imagination.

Many people have the mistaken impression that all employers handle their employees, by and large, in about the same manner, but that isn't so. There are two distinctly different schools of thought in modern industry regarding proper human relations. One group holds that business enterprises are organized and operated solely for profit and the benefit of the stockholders, and that they have no moral obligation toward the workingman. They begrudgingly comply with the labor laws, and every employee in their plants knows it. Some of these industrialists delude themselves into thinking that, because they have personnel divisions with the fanfare and trappings, the rank and file doesn't know of the underlying philosophy of profit first and last.

The other school of thought among employers comprises that group who are utterly sincere in their efforts to treat all employees justly and fairly. They not only comply with the labor laws, but voluntarily go far beyond minimum requirements, for they are actuated by a sense of moral responsibility toward their workers. While they conduct business for the profit motive, yet they don't permit the dollar sign to rob them of their desire to treat their employees as they themselves would like to be treated if positions were reversed.

Now if this well-disposed group of employers were in the majority then we foremen would not be concerned about the future, for there are good and bad in every profession and group. Unfortunately, however, they are a definite minority, even though they have conclusively demonstrated that they can and do prosper, regardless of the keen competition they have to meet.

Inasmuch as their policies produce excellent results it is difficult to understand why the majority of manufacturers refuse to adopt the same practical, efficient and progres-

sive methods. Amazingly, however, industrialists cling to the discredited rugged-individualism philosophy, which promotes constant friction with the union and frequent, costly strikes.

The executives in any plant necessarily take their cue from, and reflect the principles of, their top management. Many of these executives would be only too happy to treat all employees with uniform fairness, but they have high-salaried jobs, so it isn't smart for them to buck established procedure, despite their personal distaste for a system that condones obvious exploitation and inequitable treatment. Privately, and off the record, for example, they will admit that we foremen have been and are being given the works. To outsiders whom they can trust they often remark, "We don't blame the foremen for joining the Foreman's Association of America and fighting for the right to bargain collectively. They're getting a raw deal, and if I were a foreman I'd do the same thing."

Now if this cold-blooded, deliberate disregard of the rights of us foremen did not affect the rank and file in any way it would still be open to severe criticism for it indicates a marked deterioration in fundamental business principles. But it does involve the rank and file, because it invariably shows up in dealings between the union heads and the negotiators for management. The results are bickering, friction, threats, public accusations and frequent work stoppages. Aside from its effect upon us foremen, we are most deeply concerned over this increasing bitterness between some of our employers and their employees' unions. The situation as we foremen see it today is so serious that very little mutual respect, or incentaive to cooperate, is left between management and labor. It's dog eat dog and do the other fellow before he does you.

By these wooden-headed tactics the unscrupulous employer is setting the stage for the radicals and communists among labor leaders to steadily increase their destructive influence and power in the ranks of labor. Honorable, sincere labor leaders deplore the rise of this vicious

element, but they are gradually worming their way to the front, because they can easily prove to the rank and file that only by the use of force and more force can they get a square deal from certain of the big employers.

One of the odd things about a union contract is that an employer can adhere strictly to its terms and yet do so in a way that creates turmoil and strife. Such diabolical maladministration, where practiced, furnishes the capital-hating leader with ideal revolutionary ammunition.

Are we organized foremen unduly alarmed, therefore, when we conclude, because of these well-known facts, that American industry must clean house in the near future for the sake of continuation and preservation of free enterprise?

Now, this whole situation can be quickly remedied if the Automobile Manufacturers Association and the National Manufacturers Association will first of all stop concentrating their energies on ways and means to prevent us foremen from enjoying the benefits of collective bargaining under the terms of the Wagner Act, and at the same time quit trying to put all labor behind the eight ball through restrictive, trouble-making legislation. The manufacturers should look at the problem realistically and quit kidding themselves about a return to the good old days of bloated profits at the expense of, and by the sweat of, the man on the production line. They should draft a new code of ethics, based upon sound business principles and humanitarian considerations instead of constantly stirring up hatred toward labor in general among their own members.

After they have done this then they should appoint a committee to represent them and invite labor, as represented by both foreman and the rank and file, to also appoint committees for a series of conferences. Such a course of action will start a re-birth of good relations by examining mutual problems in an atmosphere of genuine sincerity and cooperation. Leaving the foremen out of such an arrangement would be comparable to trying to

balance comfortably on a three-legged stool with one leg missing.

There is only one group in American industry capable of taking the initiative in such a far-reaching progressive move and that is the employer group. Labor leaders have already suggested the advisability of getting together on the proper basis, but their efforts were ignored. So the next move is up to the manufacturers.

In order to make the decisions of these conferences mean something, top management would have to be willing to abide by them for the common good. Wherever they are unwilling, the companies involved should replace such reactionary officials with men who have a clear concept of the necessity for the whole program.

Without doubt, the benefits of such a reversal of the present trend would be so great that they would be hard to measure. Strikes would almost disappear overnight, production would rise and so would the national income to the advantage of every person in this country.

By contrast, we would like to have the representatives of management in industry explain to us organized foremen just what they hope to gain by trying to make a scrap of paper out of the Wagner Act as far as it concerns us supervisors. Don't they realize that if they should succeed in making the temporary adverse decision of the National Labor Relations Board stick, then they will be unable to get the supervisory material that they need from the rank and file? By their very actions they are now telling the average workman that he would be foolish to surrender the security he now enjoys as a union member by trading it for a mess of pottage carrying the title of foreman. Under those circumstances where are the foremen of the future coming from? The more active the manufacturers become in their drive to deprive us of the manifold benefits of collective bargaining under the terms of the Wagner Act, the more harm they are doing to the already strained relations between themselves and the rank and file, because they are advertising to all workers that they

still believe in exploitation and unfair treatment. It astonishes us organized foremen that they apparently can't see these things.

It must be kept in mind that we foremen only organized as a last resort. We lost all confidence in promises of adjustment of our valid grievances, for the promises were not kept. That is why we formed the Foreman's Association of America and why we are determined that we too can only hope for decent treatment through collective bargaining. After all, no one can get intelligent men to join an association, and pay dues unless they feel that it is absolutely necessary for their individual and collective welfare. Moreover, the mere fact that our membership is rapidly increasing and will soon be over twenty-two thousand, proves that our grievances must be very real.

You unorganized foremen know how you stand. We don't have to tell you. This is your chance to get the security on the job which you have every right to expect instead of being the official goat for everything that goes wrong in labor relations in your plant. We are depending upon you to give us the added strength that may be necessary to win our fight for all foremen. We are organizing new chapters every week. Is there a chapter in your factory? Thank you.

COMPANY'S EXHIBIT NO. 49-AA.

Proof in Black On White.

March 2, 1944

Good evening, Ladies and Gentlemen: For many weeks we organized foremen have been telling you in our weekly broadcasts over this station that one of our most serious grievances is that our employers contend that they have the right to fire any foreman with or without a hearing, with or without cause and regardless of the number of years of faithful service. We have pointed out that under present conditions any addle-brained or prejudiced plant manager can make a scapegoat out of a supervisor by discharging him in order to cover up his own managerial mistakes; or to satisfy a personal dislike; or because he thinks it clever to make an example of a foreman or two for the express purpose of intimidating other foremen in the plant.

Whenever we have voiced our protests over these obviously unfair conditions there have probably been a few skeptics who have said, "Listen to those foremen gripe. They're painting a terrible picture that can hardly be as bad as they say. Manufacturers are too smart to handle men that way."

Well, we have indisputable evidence to back up our contentions; printed evidence. Each Monday in the Nation's Capital, the Bureau of National Affairs publishes a paper called Labor Relations Reporter, which specializes in news and the law of industrial relations. It provides its readers with accurate and authoritative information.

On the front page of the Labor Relations Reporter, dated February 1st, 1944, there is a headline reading, "Rights of Foremen Under the Wagner Act." Below that caption is a lengthy report of the hearing conducted during the week of February 14th by the National Labor Relations Board on the question of whether we foremen are entitled to protection under the terms of the Wagner Act against discrimination and discriminatory discharge by our employers.

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The article quotes from the statements of such prominent men as R. S. Smethurst, spokesman for the National Association of Manufacturers; Thomas F. Patton, Counsel for Republic Steel Corporation; Albert E. Meder, General Counsel for the Michigan Manufacturers Association; and Tyre Taylor, of the Southern States Industrial Council. There were many other well-known industrial executives and corporation attorneys present who appeared in behalf of their particular companies or associations, among whom were Nicholas Kelley, General Counsel for Chrysler; Senator E. R. Burke, President of the Southern Coal Producers Association; and Wm. A. Creveling, General Counsel for the United States Chamber of Commerce. We mention this imposing array of men who journeyed to Washington, for this particular hearing—and we haven't named them all by any means—so that you will know that about every employer in the country was represented there.

Now we organized foremen have argued our case many times before with management. Employers have spared no expense in their determined effort to deprive us of the protection to which we are clearly entitled within the meaning of the terms of the Wagner Act. But this hearing before the N. L. R. B. in February was a real eye-opener. It was the first time that these spokesmen for employers appeared against us foremen with the avowed purpose of influencing the N. L. R. B. to rule that we foremen have no redress whatever under the Wagner Act if, for any reason, our employers choose to penalize us. One after another these representatives of management arose at the hearing and boldly stated that, inasmuch as the N. L. R. B. had decided last May that foremen do not constitute appropriate bargaining units in industry within the meaning of the Wagner Act, therefore the act does not give us protection, even as individuals, against unfair labor practices and discrimination no matter how unjust. Indeed, they flatly claimed that no foremen, employed in this country, have any protection under the labor laws, or any right to secure equitable adjustment of their valid grievances, no matter how legitimate, either acting as individuals or as a group.

Company's Exhibit No. 49-AA

Make no mistake about what they meant, for their own words are perfectly clear; their own words advertise to the people of the United States that in freedom loving America there is one class of employees, some five million of us foremen, who must not be allowed to safeguard our rights as against exploitation; that we should be legislated against by all government agencies so that we will be the industrial pawns and chattels of the manufacturers.

What an indictment of the business principles and ethics of the employers of America! What more proof could anyone ask of the utter fallacy of any group of employees, whether foremen, white collar or rank and file, basing their hope for equitable treatment on the spirit of fairness of the average manufacturer!

Translate the testimony of the authorized spokesmen who appeared for management at this hearing; translate it into actual practice in any plant and you find that employers are insisting that they have the right to say to any foreman in their employ, "You're working for us and you'll do just what we tell you or else"; or, "You're fired and it's none of your business why"; or, "We have decided you will work overtime twenty-five hours each week. You ask what we will pay you for the overtime? Not one red cent, brother! Get in there and pitch on your own time. We don't have to pay you for overtime." According to their interpretation of how we foremen rate under the law, they can say to a foreman, "You're slowing down, Jim. You've been with us for twenty-six years but we are replacing you with a younger man. Here are your walking papers." Or they can say, "The union steward doesn't like you for some reason, so you're discharged. No, we don't care to discuss the matter with you and the steward. You're out. That's all"; or they can say, "If you don't like it here because you're drawing down less pay than the fellows working under your supervision why you can quit. Of course you understand that if you do leave we aren't obligated to give you a release so that you can get a foreman's job somewhere else." Or they can say, "We have decided to put you on a flat salary instead

of your present hourly rate. You say you don't want it because it will reduce your earnings? Well, that's just too bad, because that's our decision and it goes!" Or they can say, "If you will cooperate with us, never complain about your treatment, not ask questions, then we will continue to tell the government that we need you. Otherwise we won't ask for another deferment for you." Or they can say, "So you're quitting your job in protest. Well, well! Did you stop to think that we are under no obligation to give you a release and that you will have to wait sixty days for another job? Besides, news travels fast among the manufacturers in this town and, maybe when you are eligible to apply for work no one will want you. Perhaps you had better think it over before flying off the handle."

Do those tactics sound fantastic to you ladies and gentlemen? Do they sound like products of our imagination? Well, it may surprise you to learn that many foremen have been talked to, and threatened, in one or more of these ways during the past few years. It is the modern technique of many employers—the same technique for which they requested official N. L. R. B. approval in Washington just two weeks ago.

Now if we foremen, officers of the Foreman's Association of America, had not been present at that Washington hearing; had we not heard management's testimony with our own ears; then we would be inclined to doubt that any such demands had been made. Right now, we still have to pinch ourselves to realize that employers could possibly be so short-sighted as to promote such an unwise, unfair, trouble-making attitude toward us foremen. But there is the factual record; there it is in black on white for all to see.

We were not alone at Washington in our defense of our rights. The American Federation of Labor and the C. I. O. also had official representatives who testified at the hearing. While we of the Foreman's Association are an independent organization, yet the big rank and file unions realize that if top management should succeed in shutting

us off from the manifold benefits of the Wagner Act, then it will have a harmful and far-reaching effect on the bargaining rights of all labor in general. Once the Wagner Act is cracked open, insofar as it applies to one group of employees, then that wedge will serve as the break-through to make a chopping block of its terms. After all, the act states definitely that its benefits and privileges are applicable to all employees. For that reason the temporary adverse ruling of the N. L. R. B. of last May simply cannot and will not stick. Please bear in mind that prior to last May the Board had recognized us foremen as appropriate collective bargaining units in industry. Simple justice plus the intent of the author of the act and the Congress that passed it demand that the May decision be reversed again. The N. L. R. B. is an administrative, not a legislative body. Congress enacted the law and it is the plain duty of the government agencies to administer it as it was written, not as the manufacturers wish to interpret it.

We hope that these unpleasant facts will awaken you unorganized foremen to action. Perhaps some of you feel that you have nothing to worry about in your particular plant and, therefore, have no need of joining us in this crusade for our right to bargain collectively for our individual and collective welfare. If you are sincere in that conclusion—and no doubt you are—then you should find out at once whether your employer is a member of the Automobile Manufacturers Association, the National Association of Manufacturers, the Michigan Manufacturers Association, or the United States Chamber of Commerce. If you discover that he is a member of any one of these big four then you will know that he approves of what the representatives of these huge associations said in his behalf before the N. L. R. B. about your rights as a foreman. If he doesn't approve, then of course he will protest to the officers of his association, whichever one it is, and publicly state that he himself is not a party to this sinister, ill-timed attempt to rob supervisors of all legal labor law protection. Moreover, if he really means it, he will likely cancel his membership in any association which has the

brass to class him openly as an exploiter of the workingman without securing his consent beforehand.

If we foremen fail now in our drive for the same rights that all other citizens enjoy, then it may well be another fifty years before we have the same opportunity again. Our cause is just and we are making genuine headway, but we need all of the help we can get from you foremen who are not yet members of our association. We cordially invite you to pay us a visit and get the facts. We're foremen too and can appreciate your problems. Thank you.

COMPANY'S EXHIBIT NO. 49-BB.

March 9, 1944.

"Did Congress Mean Foremen Too?"

Good evening, Ladies and Gentlemen. During the past year we organized foremen have attended many hearings held by the National Labor Relations Board and the War Labor Board. These particular sessions were called mainly because of the harmful friction that has resulted from the strenuous efforts of various big employers and their associations to halt the rapid growth of the Foreman's Association of America through restrictive governmental rulings and legislations. It all revolves round the question whether we foremen have the right of self-organization in industry for the purpose of collective bargaining.

The employers base much of their opposition to our legal rights on the contention that Congress never intended that the National Labor Relations Act, generally called the Wagner Act, should cover supervisory em-

ployees. Because the battle is getting hotter on this controversial issue of collective bargaining for foremen, this is an opportune time to consider the argument used by employers to bolster their stand. Let's find out, therefore, by analysis and examination of incontrovertible facts whether employers are justified in their conception of what Congress meant when they enacted the Wagner Act.

While employees had the right to, and did organize and bargain collectively in some industries prior to enactment of the Wagner Act, yet employers managed to emasculate and nullify those rights to a large extent by limiting union activities through a tangled maze of court actions and injunctions. Labor was constantly being hauled into court due to the ingenuity of the manufacturers, especially their ability to discover new rabbits to throw into the injunction hat.

Such deplorable misuse of legal rights simply could not endure in a freedom loving country. The corrective remedy was a bill introduced by Senator Wagner in the Senate on February 21, 1935. It was not "hurry-up" legislation, for extensive hearings were held before the Senate Committee on Education and Labor and before the House Labor Committee; hearings at which representatives of employers, labor and the public appeared and stated their views. Employers had a fair chance to voice any objections to the proposal over a period of months, for it wasn't till May 2nd that the bill was reported by the Senate Committee with amendments to the Senate, where it was debated for several days before its passage. In addition, after a report by the House Committee, the bill was thoroughly debated on the floor of the House. Finally it was passed by both houses of Congress on June 27th and was signed by President Roosevelt on July 5, 1935.

The Wagner Act definitely set up the right of self-organization of employees in industry for the purpose of collective bargaining, and provided methods by which our government can safeguard that legal right. It established the National Labor Relations Board to hear and determine cases when a question arises as to its proper application

and also to hold fair elections to determine who are the chosen representatives of employees.

Before May, 1943, we foremen were recognized by that Board as constituting appropriate collective bargaining units within the meaning of the Wagner Act. At that time we too could petition for and get the Board to hold an election in any plant where we claimed a majority of the supervisors were members of our association. One of those elections, for example, was held at the Packard Motor Car Company last year—an election which we won by an overwhelming majority, four hundred and eighty-six foremen for, and only two against.

But last May the three-man N. L. R. B. went into a surprising reverse spin and suddenly decided by a two-to-one vote that we were no longer eligible to bargain collectively. By so doing they created a tense and uncalled-for trouble-making problem. Our working arrangements and relations with our employers before last May were in a hectic but hopeful state, but they are much worse now, for the Board deprived us temporarily—and we do mean temporarily—of our rights under the benevolent and practical labor law. If either the two Board members ruling against us, or the employers figured that this unwise and strange concept of the terms of the Wagner Act would discourage foremen from organizing and fighting for their justified demands, then subsequent events have pointedly demonstrated that their calculations were inaccurate. Since that widely-publicized and much-discussed ruling, the Foreman's Association of America has been expanding both in chapters and membership faster than ever. Last May we had approximately thirty-three chapters. Today, only nine months later, we have over eighty chapters in as many different plants.

Now let's find out whether the N. L. R. B. made a serious mistake last May. The Wagner Act, Section Two, Paragraph Three, states, "When used in the Act, the term employee shall include any employee and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise." End quote.

Company's Exhibit No. 49-BB

Who is an employee anyhow? Isn't he a man who works for wages or salary in the service of an employer, just as the dictionary defines the word? Certainly we foremen don't own, or control the operations of the corporations that employ us. Even the N. L. R. B. can't sidestep section two of the Act, for the Board concedes that we are employees and therefore come within the meaning of the Act, but most astonishing, they wrote in their majority opinion of last May that they don't feel that, even granting we are employees, the Congress could possibly have meant to include us. Isn't that a bit thin, contradictory and absurd in view of the exhaustive public hearings and debates on the terminology and purposes of the Wagner Act that preceded its becoming law?

If Congress really meant to exclude some five million foremen, citizens and taxpayers, from the necessary and manifold benefits of collective bargaining, then it is logical to conclude that they would have done so in the first place. To claim otherwise is an indictment of the intelligence and integrity of the duly elected representatives of the people. And yet two men, mind you, just two men, both members of the National Labor Relations Board, do claim in effect by their actions that they have little if any respect for the intelligence and integrity of our elected representatives. The chairman of the Board, however, Harry A. Millis, to his lasting credit, refused to participate in such an abortive slap at, and unwise misinterpretation of, the established processes of democratic, law-making procedure.

Now Congress did distinctly specify that certain types of employees are not covered by the Act. They didn't leave a loophole for the imagination of any administrative board members. We find this in Section Two, Clause Three, wherein it states that the Act, and we quote, "shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parents or spouse." Unquote. Isn't that understandable English? Is any mention whatsoever made of foremen? What right,

in the name of common sense, has any Board or employer to try to read new and unwarranted meanings into such plain words? The employers have no right, but we are well aware of their motive. Their bitter, shameful endeavors in this regard prove their determination to retain the privilege of exploiting us foremen; a privilege which they have been exercising for the past few years; a privilege which forced us to band together for mutual protection.

Senator Robert F. Wagner himself, the author of the National Labor Relations Act, wrote the preface to the well-known book entitled, "The National Labor Policy and How it Works." This book was written by a recognized authority, a Washington attorney for the N. L. R. B., Joseph Rosenfarb. With reference to the rights of supervisory employees under the Wagner Act, Mr. Rosenfarb writes, quote, "Self-organization of employees can have meaning only when it is free from the influence of the employer. If the wishes of the employer should not influence the employee's choice of the bargaining representative, they should not have effect indirectly on that choice by being decisive of the bargaining unit. Thus, family relationship to the employer is a consideration in the determination whether to include certain employees in the unit. This principle also raises the problem of the relation of the supervisory, quasi-managerial, and clerical employees to the unit of the ordinary employees. These employees are, no doubt, employees within the meaning of the Act and are protected by it in their right to self-organization, but since they are closely associated with management and are the ones through whom it operates, they present a case for special treatment. Thus, they may join a union, if the eligibility rules permit it. . . . This principle is carried out in determining the appropriate unit. These employees, of course, have a right to their own unit. However, unless the ordinary employees so desire, the wish being articulated through the union, they will not be included in the unit to which the ordinary employees belong." Unquote. The author, therefore,

states quite clearly that we foremen have a right to our own collective bargaining unit.

Now, Senator Wagner, in the preface to this book, writes as follows, quote, "While everybody has heard about the National Labor Relations Act, many people still dwell in darkness concerning the Act, its provisions, methods and accomplishments. Fragmentary reports and a dilettante interest are no justifiable foundation for fixed opinion about one of the most vital matters now confronting the public. Information, definite, concrete, specific is needed. This need is met squarely by the present volume. With a readability that commends it to the layman as well as the specialist, it tells the public clearly and simply how the labor act works." Unquote.

There you have it. Senator Wagner himself has gone on record in no uncertain manner as endorsing the right of supervisory employees to organize and bargain collectively with an employer.

But despite Senator Wagner's own written words; despite the prolonged and searching discussions in Congress about each clause, each word, in the Act itself; despite all this, still the employers shout to high heaven that Congress did not mean to include us foremen in the provisions of the Act.

We realize that the attitude of a few employers toward you unorganized foremen in some plants has undergone a marked change for the better in the past few months. Have you considered what was back of the move? Have you given our association any credit for such improvements in your working conditions? The big questions for you to ask yourself are, "Have I really got any security on this job? Have I got anything in writing? Can I be sure my employer will give me a square deal when I knew he is doing all he can through his employer's association to kill the one chance I have to guarantee my future welfare through the activities of the Foreman's Association of America?" Think it over, fellow foremen. Then contact us for the inside facts of what they intend doing to you. Thank you.

COMPANY'S EXHIBIT NO. 49-CC.

March 16, 1944.

Good evening, ladies and gentlemen. Many listeners have requested information about the Foreman's Association of America. So tonight we will discuss the factual history of the Association and why it was organized.

From the early days of mass production by power machinery to the present decade the foreman was considered either as the channel through which the desires of ownership and management were conveyed to and made effective among the body of workers, or as the representative of ownership and management in the shop. Just before the opening of the present decade the organization of the body of workers into plant and industry-wide unions demanding the exclusive right of representation for collective bargaining purposes, dealing with employers or groups of employers in organizations that have existed for years, has greatly changed the real status of the foreman.

In the particulars of the day's production the foreman is yet the channel for making effective policies and directions of management as applied to production, but he is a part of neither organized ownership and management on the one hand nor of organized labor on the other hand. The foreman fits between two enormous powers, ownership and management on top and labor unions with enormous numbers on the bottom. The foreman has reason to feel that in the ceaseless struggle between ownership and wage labor the foreman will become a victim unless all foremen are organized to protect individuals and interests common and essential to the position of foremen in modern mass power production.

The Foreman's Association of America was started in August of 1941 by four of us at the Ford Motor Company. Our original idea was to form a group in just our division of the company for the protection of our rights. All of us were foremen working in the shop and had no idea of our movement spreading like a forest fire all

through the Ford plants. Foremen whom we didn't know personally, and hadn't heard of, would hear of it in other departments and divisions and voluntarily request membership. We didn't even have membership cards for a while. Before we realized what was going on, our original handful had increased to thousands.

Today over ninety-five per cent of all Ford foremen are dues-paying members of our Association. Then, even more astonishing to us, we began getting inquiries from foremen in other large Detroit corporations. After inquiries came demands for charters, something we didn't have at the time. Moreover, it is a matter of record that we had over five thousand members before a single person was paid one red cent for his time and effort in handling the many details of membership activity. Finally, we were forced to go on a business basis when the membership became too heavy for spare-time volunteer handling. As a matter of fact, we did not have even one paid organizer until January 1st, 1943. Incidentally, our organizers today are not of the so-called professional variety, but are foremen who resigned their jobs when elected to positions in our Association.

On January 1st, 1943, we had eight chapters in thirty-two different plants, and a total membership of nine thousand. Today, just fifteen months later—let me repeat, just fifteen months—we have seventy-four chapters in one hundred thirty-six different plants, large and small, and comprising a total membership of over twenty-two thousand.

Such phenomenal growth didn't just happen. And large numbers of new foremen are coming in each month despite the adverse rulings of the National Labor Relations Board and other setbacks which we have experienced during the last year. What is back of all this? Why should twenty-two thousand foremen, many holding responsible positions for years with the same employer, join our Association? Certainly they did not do so because they enjoy paying dues. It is equally silly to assume that there was, or is, any coercion whatsoever.

To put it bluntly, we foremen were driven to unionize

by the short-sighted policies of our various managements; policies that gave no recognition to, or protection for, our basic rights. We are not a class apart. We are human beings who react as expected to either fair or unfair treatment, just like any of you do. For several years we have been in a bad spot. We have had to stand helplessly on the sidelines and watch the rank and file bargain for, and get, equitable pay rates, practical grievance procedure, full seniority rights, proper job classifications, and most important of all, a sense of security. While the ordinary worker was gaining these precious adjustments and concessions, we foremen have been getting conversation, banquets, picnics, and promises. The only difference today and November, 1941, is that we don't get the banquets and picnics—and ration points have no bearing on that. Some of us don't even get the promises any more. But all of us still get conversation instead of constructive action.

For many long years we tried to adjust individual grievances with management by individual effort or "one-man" bargaining. Each of us failed. Is it any wonder then that we turned to collective action to achieve a status comparable to those working for us? Some have thoughtlessly asked, especially those who don't know what is going on, "If you don't agree with the policies of your particular management, why don't you quit and work elsewhere?" To which we reply, "Show us where we can go and get a square shake and we will do it." The plain fact is that foremen have no protective standing in most industries today, and the result is that we have lost confidence in our ability to get it other than by the proven method of collective bargaining. It comes right back to an examination of the facts of today—not yesterday—when I ask, "Why do you suppose that we have seventy-four chapters and twenty-two thousand dues-paying members from one hundred thirty-six different plants?"

The same reasons that actuated the rank and file to unionize and bargain collectively, apply to us foremen. No less an authority than Mr. Eric A. Johnson, President of the United States Chamber of Commerce, made the following statement at the annual meeting of that august

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body last year. I now quote Mr. Johnson. "The capitalism of complete laissez-faire, which thrived on low wages and maximum profits for minimum turnover, and which rejected collective bargaining and fought against justified public regulation of the competitive process is a thing of the past."

Would it surprise you listeners to learn that thousands of our members are actually getting less money in their pay checks than the workers they supervise? And that is only one of our many just grievances.

In May of last year the National Labor Relations Board, by a vote of two to one, ruled that supervisory employees do not constitute appropriate units for collective bargaining. That decision still stands, but it has not killed our Association at all, and won't, for the simple reason that we still have our grievances, only more so, since that unconstitutional ruling. It is a decision that can be reversed, and even if it isn't there are other boards and procedure provided by law which will enable us to secure our reasonable demand for collective bargaining and security.

The Foreman's Association of America is here to stay, because its very foundation rests upon the fundamental principles of justice and fair play. That is why we have been able to withstand the many severe tests to which our organization has been subjected since its founding. We claim that under the wording of the Wagner Act we foremen cannot, and will not, be deprived of our constitutional rights.

We too believe in free enterprise, and no one has yet been able to logically prove that a foreman can not function efficiently and loyally under the ideal system of free enterprise while a member of a union of his own choice. Beautifully-worded, empty theories with no basis in fact, but which pretend to show that a foreman is a fellow who is a part of management without rights are no substitute for a fair wage in proportion to ability, and for fair treatment regardless of ability. To listen to some people you would imagine that just because a foreman is a member of our Association then he has given up all ambition and

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individual initative. Nothing could be further from the truth. It stands to reason that a supervisor who possesses outstanding ability can only develop and prove his capacity, provided he is convinced that he is not being taken advantage of.

There are many sincere people who imagine that if a foreman belongs to a union he would be unable to carry out the duties of his job properly and efficiently. However, they overlook the fact that when a foreman is convinced that he is not being treated fairly he can hardly give the kind of cooperation and service expected, because his mental attitude prevents him from doing so. It stands to reason that if his morale is boosted by joining a union with some hope of getting adjustment of his grievances, then both he and his employer benefit by the move.

Foremen should unionize to help create plant-wide stability and industrial democracy wherever they work. The organization of foremen for the protection of their rights is a bigger aid to our war effort and the stepping-up of production than most people realize. It is inevitable that the foreman's frame of mind communicates itself to those under his direction. The better his personal morale, the greater volume of high quality work will his crew turn out for him. This assures making good on vital production schedules.

Because of the unfortunate, temporary ruling of the National Labor Relations Board, many of you unorganized foremen may have the mistaken impression that you have no right to become members of our Association. We assure you that the Foreman's Association of America is a legal organization in every respect; one which you should be eager to join, for we offer the one sure hope of a satisfactory solution for your pressing problems, such as edequate pay, working hours and job classification. We invite you to come in and talk it over, to learn more about us. Eight thousand supervisors have done so in the past six months and now the whole twenty-two thousand of us are carrying on a militant campaign for recognition of foremen everywhere as appropriate collective bargaining units. Truly, where there is unity, there is strength. Thank you!

Company's Exhibit No. 49-DD

COMPANY'S EXHIBIT NO. 49-DD.

"Foremanship Training in Modern Industry."

March 23, 1944.

Good evening, ladies and gentlemen. Most of us have heard that funny remark, "Don't do as I do, but do as I tell you." It is supposed to have originated with some preacher who had a keen sense of humor. When applied to modern industry the expression, "Don't do as I do, but do as I tell you," accurately describes the business philosophy that motivated most employers in their handling of labor relations. Through the written and spoken word these employers strive to conceal the true underlying principles by which they are actuated, so that they may suppress the effects of, and escape the results of, their own short-sighted policies. While the tricks used to accomplish their objectives are clever and interesting, yet an impartial survey of the effects quickly reveals that they are not only ineffective, but actually widen and deepen the labor trouble pit.

The average person, not employed in a war plant, would be amazed at the constant flow of institutional propaganda used by the employer to bolster up the morale of the rank and file. The employee is litefally swamped with inspirational literature, poster campaigns, loud speaker talks, house organs, motion pictures, visits by war heroes and many other promotional endeavors too numerous to detail, all designed to prove the absolute necessity for increasing production.

Under proper circumstances these things are stimulating, provided they aren't overdone. But in a plant where day-to-day relations between management and labor are characterized by bitter friction they fall flat, for the employer proves to the rank and file by both action and example that he himself is not sincere in his efforts to step up production. One of the strange aspects of the whole business is the apparent conviction of the employer that the average employee is just a dumb cluck who hasn't enough native

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intelligence to properly evaluate his motives. It seems they have learned little or nothing from their losing experiences in the battle to prevent the spread of rank and file unionism.

Take us foremen, for example, in these same plants. The management holds frequent meetings at which we are lectured on the duties of our job with particular emphasis on how we should treat those under our supervision. We are required to attend lectures and conferences usually conducted either by a professional spellbinder imported for the training program or a so-called conference leader from the company's personnel division.

Now anyone who belittles the value of education is either ignorant or prejudiced, but even a man who earnestly desires to improve himself can hardly derive any genuine benefit from an educational program put on in a factory where he is subjected to unfair and inequitable treatment. Attempts to improve the technique of foremanship under those adverse conditions are futile. They are about as productive of the desired results as if some minister of the gospel were to urge his congregation to mend their ways and lead good lives when they have every reason to suspect that the preacher himself is not practicing what he preaches. Mere words can never offset the damage caused by improper deliberate actions.

So let's take a look at some of the main points of modern foremanship which our employers stress and then you will appreciate why we organized foremen suggest that our employers stop calling these meetings educational conferences and instead, call them "Don't-do-as-I-do, but-do-as-I-tell-you" meetings.

We foremen are told both in meetings and in writing that we are part of management, but there isn't one foreman in a thousand who ever knows the true costs of operating his department, for that information is withheld from him. If he tries to get the facts he gets the run-around. Imagine being told you are a part of management and yet

being kept in the dark on costs. Besides, we have no say in such matters as hiring or firing, or formulating company policies. How silly then for our employers to constantly beat out the old tune that we are a part of management when we realize fully that we merely relay the orders of top management; orders that oftentimes we know will create labor trouble, but about which we can do nothing.

We are told that we should have knowledge of how other departments work, but when we try to learn how we are looked upon with suspicion by top management.

We are told that we should try to adjust minor grievances, but when we do so we usually get trapped in the resultant cross-fire between management and the workers' union.

We are told to keep up to date on the labor laws, but we are forbidden to use that knowledge after we acquire the information.

We are told to study the Company's policies but are rarely informed of what those policies really are.

We are told to step up production when in all too-many departments there is no way to get around pre-established production schedules. Such useless advice is about as sensible as a doctor ordering a patient with arthritis to run four miles per day.

We are told to build up morale among the workers by selling the company to them among other things. It would take a foreman with the mentality of a racketeer or confidence man to do that in some companies. Because he knows from his own experiences that his top management is unfair.

We are told that we must be loyal to our employers. True! Any man who is accepting wages should try to be loyal to his employer, but we can't subscribe to the principle of blind and unquestioning loyalty in the face of incontrovertible proof that we are being exploited. Loyalty isn't something that an employer can request in the same

tone that he orders a T-bone steak in a restaurant. To secure loyalty an employer must give loyalty to an employee, must earn it in other words. By the same token, no foreman can ask and get loyalty from the workers he supervises unless his handling of them merits that reaction, in which case he will get loyalty without asking for it. Real loyalty comes from within, from respect, not from mere words. It can't be manufactured from such shoddy material as a plant atmosphere clouded by discriminatory actions on the part of top management. Hitler asked the Norwegians, for example, through his Quisling for loyalty to the New Order, the Reich, but did he get it? Will he ever get it? We foremen submit that any plant manager or top executive who openly or secretly exploits his foremen is guilty of disloyalty to his Company, not to mention himself, for he is creating and intensifying a situation which is bound to adversely affect profits, sooner or later. And profits are tied up to a great extent with good morale in industry today, despite management's conviction to the contrary.

We are told that we should treat others as we should like to be treated. No one can dispute the wisdom of that advice and any man with a heart will try his best to do so, regardless of his employer's attitude. But when an employer who doesn't know the meaning of the golden rule, let alone practice it, gives out that kind of advice to foremen, he only adds fuel to the fire of existing foremen-management strife.

If an employer wants to make an educational program effective he must, first of all, be sure that he himself is trying his best to live up to the principles which he preaches to his employees. It seems to us that this is a necessary prerequisite and yet it is astonishing how many employers laugh at our conception, despite poor results from their programs. They class our concept of training as visionary idealism.

We don't know how many years it will take for the average employer to awaken to the fact that the old system of discrimination, which stemmed from the discredited phi-

losophy of rugged individualism, is a dead duck. Certainly they haven't learned this fact up to this date, for we organized foremen are being given the business day in and day out where we work. But we can take it, and the day is coming in the near future when we too will have what belongs to us by law—namely, the official recognition as appropriate collective bargaining units in industry.

One would imagine, judging from our employers' present tactics toward us, that we organized the Foreman's Association of America as some sort of social club to while away spare time. They ignore our rapid growth in the face of the present temporary denial by the N. L. R. B. of our constitutional rights under the Wagner Act.

Instead of trying to meet us half way in our sincere efforts to adjust our grievances through the practical procedure of collective bargaining, the only avenue left open to us by which we have a chance to get a square deal, they foolishly try to substitute meaningless educational programs and get nowhere.

Would it surprise you to learn that there are some employers who actually believe that we enjoy the responsibility that goes with the title of foreman so much that we don't care whether we are underpaid for the work? They don't hesitate to also claim that we want to be bosses so badly that we are willing to put in plenty of overtime for nothing, just to have the envy of the rank and file. In other words, an employee working under us is supposed to be jealous of our position when that same employee knows he is making bigger money than we are in many instances. Such poppycock coming from the employer is hardly worth consideration, except it is so asinine that it is almost news like the story of the man biting the dog.

The foreman of today doesn't need education on the all-important subject of industrial relations one-tenth as much as his employer needs it. The National Association of Manufacturers would do a real service for the average manufacturer in their membership if they would institute a training course to teach the employer how to foster and

maintain industrial peace. But they won't do it, for they measure success by the dollar sign, the old yardstick. They don't seem to realize that the successful manufacturer of the post-war era will be the one who recognizes and accepts a moral obligation toward his employees, for to that manufacturer will also come ample profits, while his competitors are wallowing in the trough of endless work stoppages and labor strife.

From the tremendous response to our broadcasts we know that thousands of you unorganized foremen are doing some constructive thinking about your future. We have information at our offices that will help you gain the security that you want. It's yours for the asking. Thank you.

COMPANY'S EXHIBIT NO. 49-EE.

"Our Formula for Better Industrial Relations"

March 30, 1944.

Good evening, ladies and gentlemen. We Americans are confronted with many grave post-war problems, which are receiving the serious consideration of both government and industry, because there is an acute realization of the necessity for anticipating national difficulties in order to avoid post-war chaos. Intelligent planning and the courage to make plans effective are essential to the preservation of free enterprise.

We organized foremen feel that the most important of our domestic problems is the explosive question of labor

relations once the war is ended. Judging from the attention being paid this vital matter by many men, prominent in government and industry, we foremen are not alone in our conclusion that this problem must be settled satisfactorily before all others, otherwise the foundation for a happy, prosperous peacetime America will rest on quicksand.

Such well known men as Eric A. Johnson, President of the United States Chamber of Commerce, and William H. Davis, Chairman of the War Labor Board, were recently quoted on this subject. Both of them offered formulas to remove the dangerous friction that now exists in all too many plants, large and small. Their proposals have merit but we are of the opinion that they fail to expose the root of the evil.

We foremen, who work in war plants everywhere, act as the "go-between" for top management and labor. Consequently, we are in a position to properly evaluate causes and effects of strife between employer and employee. Certainly no one group of employees in all industry has the same opportunity as we to observe and analyze what is going on, for we are right in the middle of any and all turmoil.

Let's be realistic about this situation. Labor and management have been steadily getting further apart, rather than closer together, especially since we got into the war. In these radio talks we have discussed a number of reasons which have brought this condition about, but the big question is, "What can be done about it?"

The real underlying causes of harmful industrial relations can be found by studying the business ethics which actuate the average employer in his dealings with labor. Now we don't assert that labor is entirely blameless for the deplorable state of affairs, because there are a few leaders in their ranks who combine downright incompetence with trouble-brewing tactics which serves to keep the labor-management friction pot boiling. But those few leaders could not and would not last very long in their positions of influence, were it not for the short-sighted

policies of employers who don't seem to grasp the fact that they are supplying them with "stay-in-office" ammunition.

We organized foremen have our own formula to remedy the whole sorry mess; a formula which will re-establish healthy, progressive industrial relations overnight, if the majority of employers are sufficiently far-sighted to adopt these ideas.

Suggestion number one. Let the employer and all his key executives accept and carry out in actual practice the fundamental principle that any employer has a moral obligation toward his employees. Not much headway can be made in the conference room when the day to day relations in the plant are characterized on the part of the employer by a hard-boiled attitude toward union shop stewards, by discrimination and unnecessary discharge, by the iron hand of discipline and by unnecessarily harsh rules and so forth. Any sharp tactics are bound to kill confidence and nullify any attempt to smooth over in the important conferences with union leaders. The employer cannot sidestep the truth of that old adage, "Actions speak louder than words."

Suggestion number two. Instead of developing and enlarging upon the habit of giving out statements that are misleading during a strike, statements that can only result in a black eye for labor in general, the employer would exhibit genuine wisdom if he would be more discreet in his interviews with newspaper reporters. Let him temper his remarks with a spirit of justice. In ninety-five per cent of all strikes he then could give out a statement something like this, "We regret this work stoppage, but we feel that we should share the blame with labor. Somewhere along the line we must have fallen down in our labor relations policy. Our employees are good, solid Americans, most of whom have relatives in the armed forces. They buy their share of bonds and give generously of their blood to the blood bank every time we ask them to do so. They're real people and we're proud of their record, despite this unpleasant walkout. Tell your readers we are determined to

get to the bottom of the cause of this trouble and are willing to do our part to correct whatever is wrong."

Suggestion number three. Let the employer refuse to be a party to, or give active support to the efforts of his manufacturers' association at the state capitals and Washington to either hamstring labor by adverse legislation or wreck the Wagner Act. How can an employer have the nerve to expect to promote labor peace in his plant through numerous conferences when the heads of the local are well aware of his spiteful attitude toward labor's bill of rights, the Wagner Act?

Suggestion number four. Let the employer quit issuing trouble-making orders through foremen to the rank and file with the purpose of testing out how far he can push labor around without backwash. When such unfair labor practice backfires the employers usually hide behind the thinly-veiled subterfuge that his supervisors must have misinterpreted his instructions. If necessary to save face and escape unpleasant consequences he will often bolster this weak alibi by firing a foreman or two. But he isn't fooling labor one bit by this attempted cover-up, for labor knows that foremen merely carry out company policies and have no say in formulating them.

Suggestion number five. Let the employer clean house of any labor spies on the payroll. Let him quit deluding himself that labor doesn't know they are out there on the line. In other words, let such an employer quit belitting the brains of, and insulting the intelligence of the rank and file. It's about time that the average employer awakens to the fact that most workers are better educated and much better informed than in the days when they could be exploited because of ignorance.

Suggestion number six. Let the employer quit the unwise practice of trying to exploit us foremen just because we are temporarily barred from official recognition as appropriate collective bargaining units within the meaning of the Wagner Act. Let him realize that he can hardly hope to have or hold good morale among the rank and file when they know that we foremen are being treated un-

fairly. Doesn't the employer know that such actions advertise to all employees that he still has ice water in his veins and that they had better be on their guard to protect their own rights?

Suggestion number seven. Let the employer be sure that all of his foremen thoroughly understand not only labor laws, but the terms of the contract with the union, as well as details governing company policies and rules affecting supervision of the working force.

Suggestion number eight. Let each employer admit that he has a moral obligation toward fellow employers. Let him realize that mal-administration of labor relations in his own plant creates morale problems for other manufacturers, for they too must pay the penalty for his indiscretions.

Suggestion number nine. Let the employer quit trying to intimidate us foremen from protecting our rights. Let him realize that we foremen have lost confidence in good intentions and promises of adjustment of our grievances that have not been kept. Let him also realize that we are convinced that the only hope we have for equitable treatment and security on the job is through the sensible, protective procedure of collective bargaining.

You unorganized foremen have a golden opportunity right now to assure yourselves of future security by joining up with the thousands of us who are carrying on this militant fight for your rights as well as ours. There is strength in numbers as well as unity and we are very encouraged by the tremendous response we are getting to these programs. If there isn't a chapter in your plant, we urge you to contact us for information. There is no obligation involved but it can mean a great deal to you. Thank you.

COMPANY'S EXHIBIT 49-FF.

"The Effects of Intimidation."

April 6, 1944.

Good evening, Ladies and Gentlemen. It is safe to say that everyone resents intimidation, no matter from what source, for it simply does not fit into our American way of life.

Take the manufacturer. He is determined to retain the system of free enterprise, but he has learned that he must quickly meet any attempt to intimidate him if he wants to preserve his rights. He will not accept dictation on his company policies and will resist it with every resource at his command. The manufacturer, himself a product of American opportunity, demands a minimum of restriction from government and industry alike. And we foremen don't blame him, for we too believe that every man has a right to work out his own destiny in accordance with our democratic laws.

However, there is a sharp difference of opinion between us foremen and our employers about the interpretation of the words, "free enterprise." Employers in general have taken the word "free" in its widest meaning. Their actions speak their belief that a business enterprise must be allowed to develop and expand with all speed, without let or hindrance by government, and with no thought of the social maladjustment that may follow such unrestrained license. We foremen, on the other hand, define free enterprise as an ideal system of doing business, whereby industry is encouraged to start new ventures, to expand and grow. We heartily endorse the necessity for the profit incentive, but we claim it must not be permitted to come before adequate wages and decent working conditions. Whenever industrial relations are regulated by the dollar sign, then the employee suffers from ruthless exploitation.

Anyone can visit the public library and read numerous books detailing the factual history of the struggle of labor

during the past fifty years to gain its present rights. The record proves that management fought the labor movement by political power, by lockouts, by countless injunctions, by propaganda, by labor spies and detective agencies, by police forces and state militia, by discrimination and other means too numerous to mention. These methods were used to intimidate the worker, but the worker wouldn't take it. He fought back all those years and his opposition was finally rewarded when he got his bill of rights, the Wagner Act.

Now you would imagine that the average employer would learn by that experience that intimidation is a dangerous boomerang, which is bound to wheel around and smack its exponent. But we foremen can cite facts from present-day behavior, which demonstrate that most of the employers, especially some of the large ones, still subscribe to the discredited philosophy of intimidation.

Before the Wagner Act became law, we foremen were delegated sufficient authority so that we had some leeway in making decisions on many problems in our own departments. Consequently, we exercised considerable control over both quality and quantity of production. If we made a good showing, we sometimes received the credit and a raise in pay. At that time it was customary to make a foreman's job attractive by paying him more money than those whose activities he supervised.

Then came the Wagner Act, which provided the rank and file with a practical procedure by which they could protect their interests. When a great majority of workers joined unions and signed collective bargaining contracts with employers, their contracts embodied clauses which did away with much of the authority of foremen. This was beneficial for all employees, including foremen, because it prevented the employer from using foremen to exploit the rank and file. Such an unhealthy condition could not, and did not, last.

With the advent of collective bargaining, the duties and authority of supervisory employees underwent a drastic

change. The employer could no longer use the foremen as formerly, due to the collective bargaining safeguards. Right then the attitude of the employer toward us foremen changed, and we became the new victims of group exploitation.

This became apparent when our employers neglected to keep our pay in proportion with the increases negotiated by the rank and file unions. In addition, most of us don't get paid for overtime, despite the many extra hours we put in. The only logical conclusion, after analyzing our treatment, is that our employers want to swell their profits at our expense. How else can it be explained? But wage inequities and the donation of overtime are just two of our many valid grievances. We foremen have no security whatever in our jobs,; we have no seniority to govern layoffs and we have been denied collective bargaining for the moment. Even a foreman who has given some twenty or twenty-five years of faithful, profitable service can be eased out overnight at the mere whim of any plant manager without cause or a hearing. It makes no difference whether he is still capable of giving full value for money received. Besides, we foremen are being used every day, in the plants where we work, as the scapegoats when trouble flares up between our employer and the union. Worst of all, the final straw, we are now being subjected to various forms of intimidation, open and hidden, to shut us off from the manifold advantages of collective bargaining.

In some of the larger plants, where foremen are not organized, many foremen hesitate to voice their protests over obviously unfair treatment, for fear of being fired as an object lesson to fellow foremen. Those who take a change and express dissatisfaction either get fired or else wind up with a gob of applesauce, dished out by some fast talker in top management, who makes double meaning promises that are never kept.

Those are the principal reasons why we organized the Foreman's Association of America just thirty months ago. Each of us, acting as individuals, had honestly tried to

adjust our grievances with our employers, but we got nowhere fast. It was only as a last resort that we decided to unite so that we could insure our individual and collective welfare. And we're glad we did so, because we are at last beginning to get a square deal in some plants, which shows that in unity there is strength.

Prior to last May the National Labor Relations Board recognized us foremen as employees within the meaning of the clearly defined terms of the Wagner Act, therefore eligible to bargain collectively. But employers were alarmed because of the rapid growth of our association, so they made their first concerted move to choke us off. Many prominent employers from all over the country, spearheaded by C. E. Wilson, president of General Motors, actually journeyed to Washington last March in an attempt to promote one of the most vicious pieces of proposed legislation that has ever come up before a House committee. Mr. Wilson, followed by a large number of industrialists, testified in favor of the Smith Bill—a bill which would have made it a crime—yes, a crime—punishable by law, for us foremen to even belong to any union, much less bargain collectively for our rights. Though the bill died a silent death in the pigeon holes of the House Military Affairs Committee, yet the strenuous efforts of our employers to make it law told us in no uncertain way just how much respect and consideration they really have for the rights of foremen everywhere, no matter how you look at it. It must be kept in mind that the un-American Smith Bill had the full support of the Automobile Manufacturers Association and the National Association of Manufacturers.

Then last May the three-man National Labor Relations Board suddenly reversed its previous stand, and ruled by a two-to-one vote that we foremen did not constitute appropriate units for collective bargaining. But make no mistake about it. That unwise and unconstitutional decision cannot, and will not, stand, if we foremen continue the battle for our proper place in the industrial sun. No less an authority than Chairman Millis himself of the N.

Company's Exhibit No. 49-FF.

L. R. B. detailed the reasons in his dissenting minority opinion as to why the decision was in error. The majority or adverse opinion of the other two board members advanced the flimsy excuses that we are a part of management, and that Congress couldn't have meant that foremen should bargain collectively. However, they did admit that we are employees within the meaning of the Wagner Act. So two men, mind you, presumed to read a new and unwarranted meaning into the clear-cut wording of the Wagner Act, thereby telling Congress in effect, "You Congressmen need a guardian like us two fellows. You didn't know what you were doing when you enacted the Wagner Act, so we will correct your colossal mistake." We foremen can be mighty thankful that there are such intelligent public servants as Chairman Harry A. Millis; a man who declines to exceed his authority; a man who understands the difference between the words "administer" and "legislate."

Following that unfortunate and temporary ruling, our employers figured that the Foreman's Association of America would wither on the vine, but they miscalculated. Instead of shriveling up, we have enjoyed our fastest growth. Thousands of foremen have joined up and we now have more than eighty chapters in 150 plants.

In February we attended a hearing held in Washington by the National Labor Relations Board, which was called for the purpose of hearing testimony on the question of whether we foremen are entitled, under the terms of the Wagner Act, to protection against discrimination and discriminatory discharge.

Practically every manufacturer in this country was represented there, some by their corporate attorneys, others by expensive legal counsel appearing for such outfits as the Michigan Manufacturers Association, the National Association of Manufacturers and the United States Chamber of Commerce.

Amazing though it may seem, the employers argued that we foremen have no protection whatever against unfair

labor practices and discrimination, no matter how unjust, either as individuals or as a group. In other words, we are the industrial pawns and chattels of our employers, according to their own plainly spoken words. That will give you some idea of whether we are justified in fighting such a monstrous conception of industrial relations.

These indisputable facts prove the utter fallacy of any foreman depending on the spirit of fairness of his employer. What can he expect from an employer who brazenly insists, before a government board, that he has the right to intimidate any foreman in his employ if he chooses to do so? To you unorganized foremen we say, "If you imagine your own employer has no intention of exploiting you now or in the future, they why did your employer make these statements at Washington only forty-five days ago?"

You foremen who have been intimidated from joining our association in the past and are now lulled to sleep in this crisis by monthly dinners, idle flattery, nice write-ups in monthly house organs, empty promotions carrying fancy titles but no increase in pay and lectures on why you are such an important part of management, should analyze and weigh all these factors. Ask yourselves, for example, on what date your employer started to feed you sugar. Was it not after you had been called on the carpet and threatened with loss of your job—yes, even with blacklisting—if you dared to join our association?

You unorganized foremen don't realize the power of collective action. We organized foremen, over twenty-two thousand of us, can tell you. If you will get together with us, then you, too, can, with our assistance, beat back all attempts at intimidation which is depriving you of your self-respect. Intimidation by employers failed miserably with the rank and file. It will meet the same fate from the foremen. Wishful thinking will never get you anywhere. Get in touch with us for important information. Don't put it off till a better day, because there will never be a better day to win this fight for your rights.

Thank you.

COMPANY'S EXHIBIT NO. 49-GG.

"Education in Reverse."

April 13, 1944.

Good evening, Ladies and Gentlemen. It may sound strange and contradictory, when we organized foremen emphatically state that most employers, especially some of the larger corporations, are doing everything possible to prove that all foremen in industry should bargain collectively for the protection of their interests. Yet an impartial analysis of the facts warrants this conclusion.

Of course, we know that employers really have no intention of promoting the idea of collective bargaining for foremen if they can avoid it. Everyone is familiar with the militant fight they are waging to prevent us from realization of that legal right.

It is interesting to examine the various moves made by employers during recent years affecting their foremen. Such examination shows conclusively just why the Foreman's Association of America exists.

In breaking down the underlying causes of the strife between foremen and management, we find that the actions of management can be divided under two headings: one under the heading of "Deliberate exploitation of foremen in the plants"; the other under the heading, "Positive action against foremen outside the plants."

First, let's consider the matter of deliberate exploitation within the plants. We term this short-sighted policy as deliberate, because there is too much damaging evidence to call it anything else. Any employer, being human, will make mistakes. But when an employer makes the same errors of commission and omission day in day out through the years; errors that clearly indicate a policy of exploitation; then they can only be properly described as deliberate.

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Prior to the year 1937, we foremen, as a rule, were accorded a reasonable degree of recognition, responsibility and equitable treatment. Of course, the treatment varied in different plants, for each factory management had its own concept of industrial relations; such concept stemming from their character and sense of moral obligation.

Beginning with 1937, the year notable for wholesale unionization of the rank and file, there was a noticeable change in the attitude of employers toward their foremen. This change can only be accounted for by the fact that the contracts executed between employers and the unions stipulated that foremen were excluded from union membership. This exclusion clause simply meant that management was still free to handle foremen as they saw fit, for the foremen had no collective bargaining rights or signed contracts setting up grievance procedures in such controversial matters as wage scales and so forth.

You will recall that when the Wagner Act became law, the manufacturers vigorously protested that it was one-sided legislation, that it favored the workers. Most everyone knows that the manufacturers haven't changed their minds about the Wagner Act, for they have made innumerable attempts through the courts and through Congress to have it amended. The Wagner Act was, and still is, a bitter pill for employers to swallow.

Ever since the advent of mass unionization, we foremen have been the channel through whom management has chosen to express its bitterness toward labor laws. Employers have vented their bad humor on us, for we have become the outlet through which management blows off its load of internal labor friction steam. Naturally we resent that position.

Now, we foremen were glad to see the rank and file get fair wages, but each new wage boost brought their pay rates closer to those of the foremen, because we foremen either received no increase or else were given only a fractional rather than a proportionate raise. The result was,

that between 1937 and 1941, the gap between the foremen's pay checks and the workers' pay checks gradually narrowed to the point where thousands of foreman were earning less money than those whose activities they supervised.

Part of this situation was due to the requirement that most foremen continue to put in overtime hours without pay. For example: during the five years from 1939 to 1943, inclusive, one Detroit foreman worked a total of 2,385 hours overtime for nothing. Reducing the figures to a weekly average, we find that he donated a little over nine hours of work each week. Had he been getting an adequate salary, then he wouldn't have objected to working one extra nine-hour day per week, but can you blame him for being dissatisfied when we inform you that the men working under his direction, men who did not have his responsibility, were paid from fifty to three hundred dollars more per year than he was? We assure you that such treatment is comparatively common.

While wage inequities are, of themselves, trouble-breeders, yet we foremen have also been exploited in several other ways. Any foreman in modern industry can be fired at the mere whim of some hard-boiled plant manager. It isn't a question of whether the executive is justified. The important angle is that the foreman has no recourse, no opportunity to defend himself, under present conditions.

Many employers will demote or discharge a foreman who has given them years of faithful, efficient service just to put fear into the hearts of the other foremen. How can any foreman feel any sense of security in his job or confidence in his employer, when he is an eyewitness to such discrimination?

In addition, when a foreman has a valid grievance in most plants, he soon discovers that he gets the run-around when he seeks satisfactory adjustment.

Take a good look at all these factors: wage inequities, lack of seniority rights, absence of practical grievance procedure, overtime work without compensation and lack

of security; and then visualize how a foreman must feel about such obviously unfair treatment. And please bear in mind that the foreman, acting on his own, tried to secure redress for several years, but got nowhere. Is it hard, therefore, to understand why we foremen finally decided that only by collective action through the power of our own independent association, could we ever hope to get a square deal?

Given these facts, you can readily appreciate why we class the treatment of our employers as deliberate exploitation. By what other language could it be accurately described?

Instead of adopting an enlightened and progressive course of action, designed to eliminate the causes of our grievances, the employers are centering their efforts in the plants toward telling us by words, not actions, that we are a part of management and should not organize. That is why we dub their futile methods as education in reverse, something new in labor relations. Their present policy is about as logical as if a father were to constantly tell his son that he loves him and yet never misses whipping him for the slightest misstep.

Since we organized our own association, the great majority of employers have been very busy taking positive action outside of their plants in order to curb us foremen. They are expending huge sums of money by retaining expensive legal talent and in many other ways to prevent our regaining official recognition as appropriate collective bargaining units. They are battling us before congressional committees, state labor boards, the local and national war labor boards and the powerful National Labor Relations Board.

Now we expected opposition and plenty of it, for we have long since learned the business philisophy actuating our employers, but we never imagined that our employers would come right out in the open and reveal their true motives, while arguing against our right to bargain collectively within the meaning of the clear-cut wording of

the Wagner Act. For this, however, we are thankful, because their actions indict them far better than our accusations ever could.

The first concentrated attack on our rights came during the hearings before the House Military Affairs Committee in March of 1943 when the vicious Smith Bill was up for consideration. The first testimonial gun in favor of its passage was fired by C. E. Wilson, President of General Motors, who spoke for the united membership of the Automobile Manufacturers Association, which is made up of all manufacturers of passenger cars with the exception of the Ford Motor Company. Most of the truck manufacturers also belong. Following Mr. Wilson, employers from all over the country also journeyed to Washington to add their supporting testimony in favor of the bill.

And what were they testifying for? Why, they were asking Congress to enact a law which would have provided the employer with autocratic and dictatorial control over all foremen, for the act would have given him the power to invoke severe penalties if a foreman were to join any labor organization engaging in collective bargaining. The act also set up prison terms and fines for any foreman who might be convicted of the terrible crime of membership in such a labor organization. In addition the act would have empowered the employer to use the threat of railroading a foreman into the army, as if that was some sort of disgrace like a prison sentence. The bill was so un-American that the congressional committee couldn't stomach it, so it died in committee.

But what are we foremen, American citizens and taxpayers, who are doing our full share toward winning this war; what are we to think when employers gang up on us to try to push through such despicable legislation? Do men with such a warped viewpoint deserve our respect and trust? As a matter of fact, we were deeply shocked by their display of unfairness.

While the Smith Bill served to wise us up to the employers' school of thinking, our most valuable education

came in February of this year before the National Labor Relations Board. Practically every employer in the country, except Ford Motor, was represented at that hearing, which was called to take testimony on the question of whether we foremen are entitled to protection under the terms of the Wagner Act against discrimination and discriminatory discharge by our employers.

One after another, representatives of management declared that the Wagner Act does not give us any protection, even as individuals, against unfair labor practices, and discrimination. In other words, they openly demanded the right to exploit us if they so chose.

This revelation, plus the testimony in favor of the Smith Bill, added to the treatment we have been getting on the job, are the factual reasons given us directly by employers as to why we would be very foolish to ever give up our fight for collective bargaining.

The employers don't want us to organize, yet their actions educate us to redouble our efforts for that very purpose. Truly it is education in reverse, which has resulted in much faster expansion of our Association than we had ever dreamed.

You unorganized foremen may get temporary concessions while we organized foremen are fighting this battle for our rights, but how long do you think you will keep them if we should lose the fight? Think it over. Thank you.

Company's Exhibit No. 49-HH

COMPANY'S EXHIBIT NO. 49-HH.

"Post-War Planning for Better Labor Relations."

April 20, 1944.

Good evening, Ladies and Gentlemen. Last year during February, March and April, we organized foremen conducted our first weekly radio broadcasts. We devoted that whole series to the causes and results of the harmful friction that existed between employers and employees, and suggested practical methods, based upon our familiarity with the problem, by which this industrial strife could be eliminated. Because we foremen act as the "go-between" for top management and labor, we knew then that their constant tug of war was hampering the output of vital war materials, regardless of impressive production statistics. We knew that production could have been stepped up had the two warring factions been able to bury the hatchet.

At that time both the War Production Board and the manufacturers were making a great splurge with the establishment of labor-management committees, but week after week we foremen pointed out the fallacy of depending on such committees to create a new spirit of cooperation. We were the only voice in the country last year that predicted failure of the committee idea. Subsequent events have vindicated our judgment, for what has happened to these committees? The sad fact is that they were a colossal flop, and while they still exist in name in many plants, they long since have ceased to function or serve any useful purpose.

In this present series of radio talks we have warned employers several times that they are endangering the ideal system of free enterprise by their short-sighted treatment of us foremen, organized and unorganized, because their actions plainly indicate that they still have no real

conception of the absolute necessity for discarding their reactionary policies toward employees.

In recent weeks, national publicity has been accorded the pronouncements of several big men in both industry and government on the important subject of post-war industrial relations. Such men as Eric A. Johnston, president of the United States Chamber of Commerce, and William H. Davis, chairman of the War Labor Board, have made definite suggestions. Everything we have read on the subject indicates that the speakers don't seem to have a clear grasp of the true situation in industry, otherwise they would surely be concerned with the underlying cause of the bad blood between management and labor, rather than advise remedies which seek to correct visible results. We shall confine tonight's discussion to an examination of their recommendations.

In the first place, spokesmen for government and industry state that much of the trouble has been caused by the green, tough and inexperienced leadership of the young unions, along with the irreconcilables of industry. That in our opinion is only partially true.

They mention irreconcilables in industry as if they constituted a small, though important minority. We organized foremen insist, on the contrary, that the great majority of employers are irreconcilables; men who simply refuse to accept and practice the fundamental principles of sound, progressive industrial relations which would insure labor peace.

They speak of the green, tough and inexperienced leadership of the young unions as if that leadership should share responsibility for the present bitterness between management and labor. The performance record of the majority of these leaders proves that their concept and stewardship of labor relations is much more enlightened than that of the employers. The heads of the big unions have long since outgrown the green stage, and any display of toughness on their part in recent years has been generated by the high-handed attitude of the employers.

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Many employers have set a bad example during this war by taking advantage of the unions under the guise of patriotism. They have made no effort to help unions maintain wages in proportion to rising costs of living, but have been smug in their insistence on retention of the little steel wage formula; they have promoted harsh, restrictive labor legislation such as the Smith-Connally Act; they have frequently tarred and feathered labor to the public when strikes occurred by the inexcusable use of the word "sabotage"; and, finally, they have never given credit to those labor leaders who have tried so hard to stop wildcat strikes in order to keep the "no-strike" pledge. It makes little difference whether the Smith-Connally Act, as passed by Congress, has been ineffective because of its loose wording, or whether employers succeed in keeping the little steel wage formula. The important thing is that too many employers, individually and collectively, have added fuel to the fire by these various moves. These actions, considered as a whole, tell labor in no uncertain way that employers are determined to curb them. Can union leaders be blamed, therefore, when they meet fire with fire to protect the interests of the rank and file and preserve labor's bill of rights, the Wagner Act?

Spokesmen for industry offer a formula for harmony in industry which will not work out under present conditions. They advocate that labor and management live up to their contracts and make them work, in the belief that grievance machinery in the plant is the grass roots of all collective bargaining. We agree, but the mere establishment of grievance machinery has not been a satisfactory solution to date because employers have not lived up to the spirit of the contracts. Any contract is bound to have loopholes, and when employers search for and make use of these contractual deficiencies, then labor leaders are certain to develop a deep distrust of the motives of the employer. An atmosphere of distrust in every day relations nullifies the benefits of grievance machinery to a large extent.

They advocate that arbitration be installed as the final

stage of the contract's grievance machinery. Hasn't the War Labor Board been acting in the capacity of final arbitrator of disputes? And with what result? The board has been literally swamped with requests for settlements, most of which the employer could have adjusted in his own plant had he been so inclined. What is there to prevent the employers from misusing arbitration machinery by continuing to dump all disputes into the lap of the arbitrators?

They also advocate that employers not cause dissension by challenging the right of a duly certified union to represent the employees. We agree with the horse sense in that suggestion, but just saying it is about as futile as if our army were to send a message to the Japs requesting them to do no shooting between certain hours. How can men, steeped in animosity toward unionism, ever follow such advice? The only way to achieve that result is for industry to get rid of the one or two top factory executives in each plant who are so prejudiced.

They advocate that unions not raid each other. While raiding has happened on occasion, it has had little or no bearing as a contributing factor to the causes of labor-management friction in most plants.

They advocate that both sides make a sincere effort to negotiate a settlement, without stalling and without making impossible demands. Good advice, but we remind them that the personal character of the men involved in labor negotiations has more to do with their success or failure than any other single factor. You've got to start somewhere to lay a solid foundation on which to build good relations and, therefore, the first move that industry must make is to clean house of hard-boiled plant executives and appoint men who have open minds and a genuine desire to cooperate. Until this is done, how can you do away with the evils of stalling, jockeying for advantage and impossible demands? Labor can't do this for industry, because labor has no say in the choice of top executives.

They further advocate that employers impress on their

foremen and superintendents that you don't make tanks or guns by fomenting quarrels with the employees. Foremen, inevitably, reflect the character of management. It is their duty to carry out orders and it is the kind of orders they get, which most often adversely affects good relations. If the character of top management is such that they resort to exploitation and trickery in their dealings with labor, then how can supervisors offset such a philosophy? Instead of telling foremen of the bad results of fomenting quarrels, why doesn't management also tell the same thing to its top executives?

We organized foremen emphatically state that the weak link in this whole chain of recommendations can be found in the assumption that a set of rules will change a man's business philosophy. You can't grow crops on barren soil. It isn't rules we need so much as a thorough housecleaning. The owners of business enterprises must make the first move toward industrial peace by removing any executive who they know to be narrow-minded and vindictive toward unionism. There are plenty of capable high grade executives who can operate plants profitably, yet who are progressive and possess the essential ability, character and background to properly and fairly administer the terms of contracts between management and labor.

We foremen offer this constructive suggestion as the only workable solution. For several years now we have been, and are today, the victims of exploitation and discrimination on the part of top management in most of the plants where we are employed. As a result, we organized the Foreman's Association of America to protect ourselves against unfair labor practices. How is it possible to expect that the same men who don't hesitate to exploit us right today will be willing to follow the advice of the spokesman who propose these constructive moves?

And, think this over—in February of this year we attended a hearing before the N. L. R. B. in Washington at which the legal representatives of the National Association of Manufacturers and many other employer associations

argued that employers have the right, and insist upon retaining the right, to treat us foremen as they see fit. They based their arguments on the contention that we have no protection under the Wagner Act.

In view of the employers' expressed demands that they be permitted to exploit us if they care to, is it difficult to understand why we foremen are fighting for official reinstatement as appropriate collective bargaining units in industry? On what grounds have we any hope for fair play and a square deal other than by united effort and the practical procedure of collective bargaining?

We urge you unorganized foremen to support us in this crusade for justice. This you can best do by affiliation with our association. Of course, you will want full information and we assure you that we will be happy to be of service. Thousands of foremen are getting the facts. Why not you? Thank you.

COMPANY'S EXHIBIT NO. 49-II.

"The Requirements of Modern Foremanship"

April 27, 1944.

Good evening, ladies and gentlemen. During the past ten years in particular, American industry has made tremendous strides. We foremen have had first-hand knowledge of, and an important part in, the technical development of raw materials, machine tools, precision instruments and metal alloys. We have had much to do with the adoption of streamlined production methods, which in turn have lowered operating costs.

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Now let's take a good look at what an employer expects of a modern foreman. The foreman is required to know all about the machines installed in his department; all about the tools peculiar to its operation; and have a working knowledge of the limitations of the materials which he has to process. Because of ever-changing methods, brought on by technical and engineering improvements, he has to utilize much of his spare time in study to keep up with developments.

The foreman must turn out production that measures up to both quality and quantity specifications. Materials have to be handled properly; needs must be anticipated well in advance; intelligent planning must be done; time study must be watched and the department kept in good order. All of these things represent duties on the material side of the ledger.

On the human relations side, the foreman must be a student of human nature and a practical psychologist. He must lead men, not drive them, and yet maintain discipline. It is part of his work to gauge the ability of each individual so that he can place the right man in the most suitable work, and then be able to teach that job to the man in the shortest possible time. To accomplish this he must study likes and dislikes, hobbies, and learn something of home conditions, or otherwise he won't know enough about his help to handle them properly.

At all times, he is expected to set a good example to his men, thereby earning their respect, for without respect he can't get cooperation. Setting a good example means willingness to work hard, be cheerful, be fair, practice self-restraint and make good on promises. The average worker judges any company by the deportment of his foreman and the way he and his foreman get along. Only through establishment of mutual respect can any foreman hope to sell his group on the value of team spirit, on respect for top management, on safety and the other things which result in efficient operation.

From this detailed recital of the requirements of modern foremanship, you can readily appreciate why we maintain that the job is difficult. The American worker is much

better informed than he used to be. He wants to be treated with fairness and respect—and rightfully so! His demand is a reflection of better living conditions, better education, and the sense of security that came with collective bargaining.

If improvement in the vital field of industrial relations had kept pace with technical advancement there would be little if anything to worry about in post-war labor relations, and we would not be flooded with so many schemes for achieving post-war industrial peace. Most unfortunately, however, during the past ten years, too many employers have openly exhibited a "chip-on-the-shoulder" attitude toward their employees, both unionized and non-unionized. Instead of taking advantage of the splendid opportunity, presented for the betterment of labor relations, through the practical collective bargaining procedure set up by the Wagner Act, they have refused to accept the new conditions in good faith.

Everyone knows that, despite collective bargaining contracts between employers and employees, there has been, and is, constant friction between management and labor. Considered by itself, this turmoil is positive proof of the absolute necessity that the rank and file retain the protection of collective bargaining. If labor and management have so much trouble getting along with written contracts, then where would labor be without that safeguard? It is quite plain that they would be exploited once again just as they were prior to the enactment of Labor's Bill of Rights. Further evidence of the truth of that conclusion can be found in the fact that most employers are doing everything within their power to prevent us foremen from regaining official recognition as appropriate collective bargaining units within the framework of the National Labor Laws.

However, we foremen recognize that the employer has many problems which make it more difficult for him to realize a profit today, in spite of outstanding technical progress. For example, the employer has to contend with exceedingly heavy taxation, far keener competition, scarcity in both materials and equipment, scarcity of skilled and unskilled help, transportation difficulties and too many

government regulations. Moreover, the employer has comparatively little control over these troublesome factors.

There are two sharply-defined barriers to profit, however, over which the employers do have reasonable control; two barriers which could be virtually eliminated if the employers would act. We refer to poor labor relations between management and foremen, between management and the rank and file. If most employers would just take the initiative by making a determined effort to undo the harm, mostly caused by their bitter outlook, then these two sore spots would soon be healed by such progressive and enlightened action. Beyond question, such a move would enlist the hearty cooperation of all plant employees, for it would mean recognition of the two main cogs in the wheel of industrial peace, the foremen as a group and the rank and file.

But most employers still persist in the futile policy of demanding maximum production, while they continue to bicker over little, but trouble-making, things with labor. It is a strangely contradictory philosophy. How they can ever achieve labor peace under such unsatisfactory in-plant conditions is more than we foremen can grasp.

Take the position of us foremen in this crazy, patchwork quilt of in-plant relations. Since management and labor have been on the rampage we foremen have had to shoulder much of the burden created by their strife. Our employers never cease urging us to improve our foremanship technique to foster good morale and get out production. Yet they are not willing to pay us in proportion to the responsibility of the job. Indeed, thousands of us are paid less than those working under our direction. And that isn't the whole story either. We have been, and are being exploited, in other numerous ways, mainly because we have been temporarily denied approval by the National Labor Relations Board as appropriate collective bargaining units. In view of this incontrovertible record of years of ruthless exploitation, it is hard for us formen to understand how our employers can expect to promote fundamentally sound loyalty among the key men of the production lines; that kind of loyalty which would guarantee the results all employers seek.

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Now we foremen are fully aware that times have changed. The duties which we have mentioned are necessary parts of first class supervision.

But we emphatically state that it is obviously impossible for us foremen to fill the bill, when we ourselves have been exploited to the point where we had to band together. It's the best action we could have taken, for present day happenings clearly indicate that only by collective action can we hope to secure the rights which we failed to get, acting as individual bargaining agents.

And when we succeed in securing the manifold benefits of collective bargaining, then, but not till then, will we foremen be able to discharge our duties in the manner set forth in this talk. And until we can do so, management can hardly achieve ideal labor relations.

Many of the best informed men in America, men who know the inside facts of how most plants are operated today, agree with our conclusions. No less an authority than the distinguished chairman of the National Labor Relations Board, Mr. Harry A. Millis, wrote a detailed report of his findings with regard to the rights of us foremen and what the probable outcome will be when we bargain collectively with management. In his minority opinion in the matter of the Maryland Drydock case, Mr. Millis wrote as follows, quote, "I conclude that supervisors in mass production are a group of employees whose right to organize and bargain collectively under the protection of the act should no more be denied than that of any other group of employees. Bargaining through separate units, with their own organizations, or in separate local unions affiliated with the inter-nationals to which the rank and file locals are affiliated, or even through the same union as represents the rank and file, no problems should arise which are not susceptible of solution. The policy established by the majority attempts to prevent difficulties from arising through foremen's organization, by denying foremen's organization the protection of the act. This is a policy of negation, which does nothing towards a constructive solution of the real problems of the foremen. Of course, foremen, as employees, have the right to organize

and to seek recognition. Perhaps many employers will regard it as wise to grant this recognition. Insofar as such voluntary recognition is withheld, foremen must 'grin and bear it' or resort to the use of their economic power, an alternative which the act was meant to discourage. But whatever may happen, any attempt to frustrate a legitimate desire for self-organization and collective bargaining by such groups can only be harmful to the cause of good industrial relations and efficient production. Indeed, denial of the right to bargain collectively under the act is likely to cause foremen, 'forgotten men', with their problems not threshed out, to suffer more in loyalty and to become more militant than would be the case if they were allowed to bargain under the act and the dire predictions of the majority proved to have substantial foundation in fact, as I am convinced by observations and considerable experience they do not have.

"It is not impossible that employers may discover (as many of them have in the case of rank and file organization) that organized foremen, with responsible leadership and met by their managements in a constructive spirit, can be a positive force for good in industry. In a democratic society good industrial relations and efficient production must depend upon well-informed, self-respecting, and mutually cooperative relationships between the three groups directly involved in production — management, supervisory employees, and rank and file workers. Self-organization and collective bargaining by supervisors may contribute to the conditions necessary for good relationships and increased production." End quote.

There you have verification of what we organized foremen have said all along.

The response to these programs has been most gratifying. Thousands of foremen have thought the situation through and joined us in the past few months. We urge those of you who are not members of the Foreman's Association of America to contact us and learn what we have to offer. Your requests will receive prompt and courteous attention. Thank you.

COMPANY'S EXHIBIT NO. 49-JJ.

"Could the Golden Rule Be the Answer?"

May 4th, 1944.

Good evening, ladies and gentlemen. Every prominent speaker who comes to Detroit to present his opinions on the vital subject of industrial relations is certain to attract a crowded and attentive audience. Busy executives will drop their work to be in attendance, which indicates the importance attached to this controversial issue. In fact, everyone is interested, no matter what his particular type of business, for everyone realizes that this problem must be solved now or we all face a distressing post-war outlook rather than the expected boom.

The very fact that manufacturers pack these conferences, held by various clubs and associations to explore the labor relations situation, is conclusive evidence that they haven't found the answer; that they are searching for some magic panacea, something that can be put into effect just as they would utilize a machine tool on the production line.

We organized foremen have followed these conferences on industrial relations with great interest, for we too are vitally concerned. We are the forgotten men of the present era; the one class of employees who, at the present time, are working in a fog of uncertainty. The employers have their various manufacturers' associations, recognized associations such as the United States Chamber of Commerce, the National Association of Manufacturers and the Automobile Manufacturers Association; all formed for the express purpose of promoting and safeguarding the individual and collective welfare of the employers. The rank and file have their big unions, operating by authority of the Federal Labor Laws, which set up the practical machinery of collective bargaining to protect their rights. But, while we foremen have our own independent association, which we organized to promote our individual and collective security, yet we are temporarily denied the manifold benefits of collective bargaining procedure as a

direct result of an unwise ruling handed down a year ago by the National Labor Relations Board.

Most employers insist that it is perfectly all right—in fact advantageous for industry as a whole—for them to have their own outlets of collective protection. Many of them have finally accepted the principle of settling grievances with the rank and file by collective bargaining, as a permanent part of the human relations structure of industry, but when you mention that foremen certainly need the protection of the Wagner Act, most employers hold up their hands in horror and say it is unthinkable.

What amazes us foremen is that the great majority of employers are doing less than nothing to cooperate with us foremen. Indeed, they have proven by their actions during the past few years, that they are absolutely determined to retain the questionable privilege of continuing to exploit us in every conceivable manner. They have done everything within their power to stop our growth and to shatter our unity. They have introduced legislation before Congress which would have made it a crime, punishable by fines or imprisonment or both, for any foreman to even hold a membership card in any organization formed for collective bargaining purposes. The have appeared before national governmental agencies such as the War Labor Board and the National Labor Relations Board and openly and brazenly stated that they didn't care what the Wagner Act states; that we have no rights, because Congress surely couldn't have meant to include us foremen when they passed the law, regardless of the indisputable fact that you can search the Wagner Act from start to finish and you won't find a single word about foremen.

All that the employers have accomplished to date by these several eye-opening moves, is to sell all of us foremen, lock, stock and barrel, that we can only hope to safeguard our interests and provide ourselves future security, by fighting for our rights through the use of the only weapon that employers respect, namely, collective pressure.

We foremen aren't foreigners without rights in this country, we are citizens, in the fullest sense of the word,

men who own property, pay taxes and are carrying our full share of the load in this war. Anyone who claims otherwise simply doesn't know the facts. Over eighty per cent of the members of our association have sons and brothers and daughters in the armed forces. We are just as anxious to win this war in the shortest possible time as everyone else in these United States.

Now, all employers are not alike by any means, in their concept of human relations. There are a number of outstanding corporations that have adopted far-sighted, progressive labor relations policies; which policies are bearing healthy fruit; bigger production, lower costs and industrial peace. These firms aren't hidden away where no one can find them. Any employer who wants to, can easily learn how they have solved the problem so successfully. You would logically conclude, therefore, that instead of rushing here and there to listen to theorists and silver tongued orators expound their impractical cure-alls for labor peace, that the employers would thoroughly investigate how these few outstanding companies in America have done such a remarkable job of moulding excellent morale among their employees. But, unfortunately, such is not the case. For some strange reason the big majority of employers shun the doorways of these plants; the only plants where they can get a true insight into how to solve labor problems. What inference can any sensible person draw from such behavior other than to conclude that most employers are definitely unwilling to recognize that times have changed; that the old days of mass exploitation of employees, whether foremen or rank and file, are gone; that employees are better informed; that the Wagner Act is here to stay; and that any worker has a right to expect a reasonable profit over and above his base living expenses, a profit which he can set aside to help assure contentment and a decent standard of living in his retirement years.

We wish we had time to cite all the progressive employers who could teach the majority so much about how to deal with employees, but that being impossible, we will give two examples to prove our point. The first has to do with the Doehler Die Casting Company of Toledo, Ohio.

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Mr. William Hard wrote an interesting series of factual articles on labor-management problems for the Readers Digest. In the April, 1942 issue he points out how positive cooperation between unions and employers can promote ever-increasing efficiency in production. One part of this particular article states, quote, "The National Association of Die-Casting Workers of the C. I. O. has a contract with the Doehler Die Casting Company of Toledo. It has helped to take that company out of losses into dividends. Its chief official is Edward Cheyfitz. Mr. Cheyfitz is only twenty-eight years old. He went through the University of Michigan to become a professor of mathematics. Then he got a job in the Doehler Company's engineering department. Now he is a union agent with efficiency ideas. In 1938 the Doehler Company was losing money fast. It had three plants and four thousand workers; but as the president of the company, Mr. Charles Pack, says: 'The workers were working against the company.' Then Mr. Pack and Mr. Cheyfitz made a bargain. The company would give the union a 'union shop.' The union, in return, would go all out to improve the company's manufacturing performance. It would try to increase output, and to lower costs. It went half-and-half with the company in hiring a research engineer. It helped to organize research and efficiency committees in the plant. It established a suggestion system whereby twenty-five per cent of the dollar value of a new idea would go to the worker suggesting it, twenty-five per cent to his fellow workers, and fifty per cent to the company. It sought to prevent waste and increase the production of each man and machine. In three years Mr. Cheyfitz's idea of 'industrial democracy' raised wages in the Doehler Company by a total of two million dollars and lifted the company from earning nothing for stockholders to earning more than one million dollars for them in a twelve-month period, even without war contracts. Today, along with war contracts, the union and the company have a ten-man joint committee empowered to lay aside any shop rules which might impede war production. Mr. Pack says: 'I am proud of Eddie Cheyfitz, who is a fighting, progressive, constructive labor statesman.' Mr. Cheyfitz adds: 'I think there will be more unions like ours when there are more managements like Mr. Pack's.'" End quote.

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Another big company which has an ideal set-up in relations with employees is the Lincoln Electric Company of Cleveland, Ohio. Mr. J. L. Lincoln, president of the company, calls his program "intelligent selfishness." He shares his profits on a ratio of two-thirds to the employees and one-third to the stockholders. As a result the workers have complete confidence in him and it is to their advantage to try their level best to turn out the greatest production at the lowest possible cost, for the more they produce the more money they get paid. Mr. Lincoln started to put this system into effect when he took over the plant some thirty years ago, away back in 1914. His system has stood the test of time, for the Lincoln Electric Company has been a money maker. Of course, Mr. Lincoln has not stopped at profit sharing alone, but has also installed all of the current aids to good morale such as group insurance, vacations with pay, cash awards for suggestions and so forth.

Now we organized foremen don't claim that either the Doehler or the Lincoln formulas are the last word or that they can be adopted in their entirety by every employer. But, we do emphatically state that both of these plants are being operated on the principle of the Golden Rule, that ancient but highly practical philosophy of doing unto others as you would have them do unto you. There is the real answer to this whole turmoil that is seething in plant after plant. Until most employers wake up to the utter necessity of operating plants by the Golden Rule then they are bound to continue to have destructive in-plant labor relations.

We organized the foreman's association, because our employers never hesitated to save a nickel at our expense, and have refused to adjust our many valid grievances. As self-respecting human beings we had no other recourse. You unorganized foremen know the conditions under which you work. If you want to correct them there is a legal way and that way is the only one upon which you can depend, namely, join up with your fellow foremen in our strong, independent, rapidly-expanding association. Thank you.

COMPANY'S EXHIBIT NO. 49-KK.

"Industrial History in the Making."

May 11, 1944.

Good evening, ladies and gentlemen. In our radio program of January 6th, this year, we discussed in detail the adverse decision of the National Labor Relations Board, which was given national publicity in May of last year; that unfortunate decision, vitally affecting the status of all foremen employees, which has caused so much industrial turmoil in recent months. In that broadcast we called public attention to the fact that during 1943, the National Association of Manufacturers and the Automobile Manufacturers Association, had done everything in their power to break up our association. We cited such moves as the introduction of the infamous Smith Bill before the House Military Affairs Committee to prove our point, for the record shows that a great number of prominent employers from coast to coast all journeyed to Washington to testify in favor of that vicious piece of proposed legislation. Had the bill passed it would have made it an actual crime, punishable by fines or imprisonment, or both, for any foreman to even belong to a union organized for purposes of collective bargaining.

In that same radio talk, given by us over four months ago, we also made the following statement which we now repeat verbatim, quote; "In all fairness, though, we must give credit where it is due. All corporations aren't alike. For example, the officials of the huge Ford Motor Company have recently agreed to meet with the officers of the Foreman's Association of America in order to work out a practical program, whereby any grievances of their thousands of foremen will be handled in a proper manner. This preliminary action has been taken by Ford executives, despite the fact that the War Labor Board has not as yet accepted jurisdiction. Under the circumstances, we do not hesitate to pay tribute to the vision and far-sighted policies of Ford top management. Theirs is the kind of managerial leader-

ship that has made America the hope of the world." Unquote.

Everyone knows the outcome of that progressive and enlightened Ford decision, for on Tuesday of this week a most important contract covering wages, hours and working conditions, was signed by the Ford Motor Company and our association.

Negotiations of this agreement began on February 1st and were carried on almost daily until May 8th. This lengthy negotiating time was necessary, because we were dealing with a complex problem, concerning the working conditions of approximately ten thousand foremen. We had no precedents to guide us, for this was the first collective bargaining contract of its kind in the history of industry, affecting the relations between foremen and management in a major manufacturing concern.

The final agreement is a comprehensive document worded in understandable English. It provides recognition of the Foreman's Association of America as exclusive bargaining agent for its members in the employ of Ford. It sets up adequate and practical machinery for the satisfactory adjustment of all grievances. It provides for leaves of absence, vacations and sick leaves. It arranges for proper job classifications and fair wage rates in conformity with such classifications. It recognizes and accepts the sound principle of seniority as the controlling factor in any necessary managerial action having a bearing on a foreman's job, particularly in cases where duties of the job and ability are comparable. Broadly speaking it covers all conditions that affect the foremen.

We organized foremen are especially proud of the indisputable fact that, despite the dire and groundless predictions of most employers, the Ford contract offers conclusive evidence that there is absolutely nothing in its contents which in any manner stifles the individual ambition of any one of our members or prevents his rising to the true level of his abilities. Indeed, now that a Ford foreman doesn't have to sit up nights worrying about security on the job, he is free to concentrate his energies on such con-

structive things as self-improvement and the acquirement of valuable knowledge with the specific objective of earning promotions, purely on the basis of demonstrated capacity to measure up to all company requirements for advancement.

During the many weeks of negotiating with Ford officials we executives of the Foreman's Association always found them friendly, patient, understanding and considerate. Naturally, we had many differences of viewpoint to iron out, but one by one these difficulties melted away in the face of calm, sincere discussion. The good faith shown by Ford executives at these conferences convinced us of their sincerity of purpose and induced us to look at their side as well as ours on each issue at stake. Only in such a cooperative atmosphere are workable and practical bargaining contracts born.

Mr. I. A. Capizzi, Ford attorney, said, in a statement to the newspapers, quote, "While there is no legal compulsion, the company has agreed to this contract with the hope that it will produce better relations between the company and its foremen to the end that the war production will continue without interruption." Unquote. Future events will prove that Mr. Capizzi is correct in his assumption and verify the wisdom of the Ford management. We organized foremen now have an opportunity—and we will make the most of it—to show other employers, not by words but by actions, that better production and in-plant labor relations will inevitably follow at Ford's.

During the week of February 14th, this year, a hearing was conducted in Washington by the National Labor Relations Board on the quesion of whether we foremen are entitled to protection under the terms of the Wagner Act against discrimination and discriminatory discharge by our employers. An imposing array of legal talent and industrial executives, representing practically all manufacturers, argued that the Wagner Act does not give us any protection, even as individuals, against unfair labor practices and discrimination.

This week the N. L. R. B. released its decision on that

hearing. The Board ruled that we do come under the terms of the Wagner Act, that we have a right to join a union and to be free from discrimination. This is an important milestone in our fight for protection under the Wagner Act, for, as a result, the War Labor Board has now agreed to accept jurisdiction over most disputes with various employers. Both governmental boards have definitely recognized that we foremen do have an acute problem, which has been aggravated by the uncompromising attitude of most employers. The N. L. R. B. decision was not given under pressure, but strictly on the merits of the testimony given before its three members back in February. Until such a ruling was forthcoming, the War Labor Board apparently decided it could do little to adjust our grievances.

However, while Mr. William H. Davis, chairman of the War Labor Board, has accepted jurisdiction over disputes, yet his interpretation of a dispute does not include discriminatory discharges under the National Labor Relations Act. This is most unfortunate, because many of our foremen have been suddenly discharged in recent weeks for no apparent or announced reasons. These unfair and unexplained discharges have been one of the big causes of our present trouble, and it is hard for us to grasp why Mr. Davis should take this publicly-announced stand in view of the circumstances and the ruling of the N. L. R. B. that we organized foremen are to be free from discrimination. If employers are to be permitted to continue to use the weapon of intimidation by discriminatory discharges then we are at a loss to understand how anyone can feel that we should accept such an obviously unfair working condition.

While we were disappointed with that portion of the N. L. R. B. ruling which re-affirmed a prior decision denying us recognition as appropriate collective bargaining units, yet we interpret the body of the ruling as pointing the way to all employers whose foremen are members of our association, to voluntarily agree to bargain collectively with us just as the Ford company has done.

Let's be realistic about this whole problem. As matters stand today, the best worker in the shop is refusing pro-

motion to a supervisory job, because he is well aware of the headaches that go along with the promotion. And he is correct in his line of reasoning. Why should he accept a so-called promotion which will cost him, first of all, the security which he now has as a union member? Why should he take a job which forces him to work plenty of overtime gratis, when he can stay where he is and get paid for every minute of overtime work? Why should he throw away his seniority rights to shoulder the responsibility of foremanship and run the risk of being discharged at any time on the mere whim of some touchy plant manager? Why should he do all this only to discover that from the day he becomes a foreman he will likely be making less than he did as a worker?

It should be quite clear, therefor, to all employers that when foremen have the right to bargain collectively, then a promotion to the job of foreman will really be a promotion, something worth striving for, something attractive to the best brains on the production line, a real incentive to do better work and get ahead. There will be a marked improvement in the morale of the rank and file. Both quantity and quality of production will benefit, costs will be lower and the manufacturer will be in a better position to compete for business.

We have active chapters in over one hundred and seventy-five plants, among them some of the largest in this country. Happenings of the past several months, and particularly the past few days, should convince most employers that our association is here to stay. While we have been forced to take drastic measures of late to protect our individual and collective interests as a direct result of a whole flock of valid grievances in plant after plant, yet we do not relish our position. But we have no other alternative, because of the studied "pushing-around" to which we have been deliberately subjected.

We foremen are willing to bury this costly hatchet if you employers will meet us half way, for we earnestly desire an early and equitable settlement of the disruptive strife which has characterized foremen-management relations for the past year. Thank you.

COMPANY'S EXHIBIT No. 49-LL.

Why Does Industry Oppose Collective Bargaining For Foremen?

February 10, 1944.

Good evening, Ladies and Gentlemen: We organized foremen have been getting, and paying for, a liberal education from our employers during the past two years in the fine art, the questionable art, of erecting "public-opinion" smoke screens, designed to becloud and confuse true issues. Fortunately, we find no necessity to adopt the same tactics in our justifiable fight for recognition of our right to bargain collectively under the clear-cut authorization of the Wagner Labor Relations Act. We don't need any cards up our collective sleeve to present our side of the controversy, for we can offer plenty of solid proof to verify our position in industry; the kind of proof that has not folded up, and will not fold up, under close scrutiny from any quarter.

Nation-wide publicity has been accorded the arguments advanced by prominent spokesmen for the Automobile Manufacturers Association and the National Association of Manufacturers in opposition to collective bargaining for foremen. Their official statements seem quite plausible, but they don't stand up very well under impartial analysis.

The first heavy barrage of so-called reasons why industrialists are trying to give us the business came out of Washington last March. The occasion was the widely-advertised introduction of the vicious Smith Bill before the House Military Affairs Committee. The big guns of industry—such men as C. E. Wilson, President of General Motors; C. C. Carlton, of Motor Wheel Corporation; R. J. Goldie, of Timken Detroit Axle Company; C. B. Randall, of Inland Steel, and many, many others fired the works at us, but used the wrong kind of ammunition, for the

members of the House Military Affairs Committee were not sufficiently impressed with the weight of their arguments, especially after hearing the rebuttal testimony of us foremen, to forward the bill on to the House for discussion and disposal. So the Smith Bill was pigeon holed, despite the intense, unified drive of the manufacturers to jam it across. Its death in committee renewed our faith in the democratic processes of the legislative branch of our government.

Since that time, however, spokesmen for the employers have been using the same pattern of arguments that were put up before the House Military Affairs Committee. We ran into them again last May when we debated our controversy on a coast-to-coast radio hook-up on the "Wake Up America" program, which debate was also published in over six hundred newspapers. They were repeated in Time magazine, in industrial publications and in the write-ups of newspaper columnists, as well as in comments recently given to the papers whenever our trouble has flared up. Obviously, they have become standard equipment for want of something better, so let's examine these old saws to find out whether they really cut wood.

An outstanding favorite is the statement that it is fundamental that a man cannot serve two masters. This one has its root in a two thousand year old statement in the Bible from the Book of Matthew, which says, "No man can serve two masters; for either he will hate the one and love the other or else he will hold to the one and despise the other." Our comment. This "serving-two-masters" catch-phrase shows how easy it is for anyone to read the Bible, pick out certain writings, then twist them around to suit his convenience. It is generally accepted that the original statement in the Bible about serving two masters was made in order to warn all humanity that it is impossible to serve both our Maker and the devil at the same time. In our estimation, it is a far-fetched and abortive misuse of the meaning of the words, of the sacred book, when employers quote it as backing up their concept of

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why we foremen have no right to belong to our own association and bargain collectively. We too can find a perfect answer in the same Bible if we want to quote from the Scripture wherein it states that we should render to Caesar the things that are Caesar's and to God the things that are God's. But we prefer to confine our remarks to a realistic discussion of conditions in the plants. If any man cannot serve two masters in industry, then how about the workingman who pays dues to his union, yet works for an employer? The record, however, of American workers, both before and during this war, proves conclusively that a worker can produce far better under union protection than without it. Based upon that proven production record then why cannot we foremen, who are in desperate need of the protective benefits of collective bargaining, also produce better under similar conditions? The answer is that we can, for in some factories where our association has been responsible for ironing out problems of our members with management, the result has always been noticeably beneficial in the work of the foremen. They reacted by taking a new interest in their work, which in turn showed up in better quality and production. Did you know that organization and collective bargaining for foremen have long been accepted in the maritime and railroad industries? If the granting of such rights to their supervisory personnel for a period of some forty years had proved unworkable, then does it follow that the great maritime and railroad corporations could have operated so efficiently all these years? And finally, if we were to apply the same line of "two-masters" reasoning to all associations, how can an employer be an active member of his national association of manufacturers, yet look out for the best interests of his own company? It is absurd to say that he can't yet that is what the manufacturers claim regarding all unions when they use the "two-masters" argument.

Another common reason advanced by our employers to show why we should not be permitted to bargain collectively is that the authors of the Wagner Act never in-

tended that foremen should do so. In other words, Senator Wagner, the author of the act did not mean to extend its privileges to foremen. Didn't he? Well, Senator Wagner himself has gone on record that he definitely did mean that all employees, including foremen, should enjoy the benefits of his act. Why then do manufacturers presume to say that he didn't mean it in the face of his own statement? The act does not exclude foremen from organizing and bargaining collectively. In fact it doesn't mention foremen. It clearly states that its provisions apply to all employees in industry, but you would imagine that we owned and operated the plants when our employers discuss the status of us foremen. And how about the members of Congress who passed the act? Is it possible that that intelligent body of men didn't realize what they voted for? We foremen can't go along with that form of crystal-ball gazing!

But the prize package of all the arguments is the one heard most frequently, the one which says that we foremen are a part of a management. Now if we foremen really were a part of management, just as foremen were some years ago, and if we were treated as a part of management, then there would never have been a Foreman's Association of America. The best answer we can give to disprove management's contention in this regard is that over twenty thousand of us are now engaged in a militant campaign for the right to handle our problems as a group. If we are part of management then why are we convinced that our one chance to get redress for grievances lies only in collective action? The duties of our jobs readily establish, however, that we are just employees in the strictest sense of the word. We carry out the policies of management, but we do not formulate those policies. It makes no difference whether we do or don't agree with either the wisdom or fairness of those policies, it is still our job to carry them out. While it is true that we act for management at the first step in handling grievances of rank and file employees, still we are not allowed to make decisions on such grievances, and this is true even of minor matters

in most cases. We take no part in collective bargaining between management and the rank and file union. In addition we don't have the right to hire and fire employees.

There you have the published explanations given out by our employers in support of their determination to deprive us of the manifold advantages of collective bargaining. We assure you, however, that there are other reasons which actuate the manufacturer. These stem from the discredited philosophy of rugged individualism, a term frequently used to belittle the collective endeavors of employees to get a square deal as something un-American and unworthy of the example set by the rugged pioneers of our country. Our employers never admit any moral obligation toward us foremen. They don't believe that they should institute progressive policies which would provide a sense of security to any foreman, for example, who has given them twenty years of faithful service, the best twenty years of his life. On the contrary they insist that they have the right to discharge such a man with or without cause, with or without a hearing if they so choose. If any plant manager demotes or penalizes a foreman because he doesn't like the color of his eyes, or because of any personal prejudice, why that's perfectly in order. Nor do our employers mention that most of them require thousands of us to donate millions of hours of overtime work without pay. Nor do they ever admit that we have any valid grievances. All is lovely behind the scenes, according to them, and we foremen are some peculiar breed of ingrates who have organized merely because unionization is a modern disease which has infected us by contact with rank and file unions. No constructive effort has been or is being made, by management, to correct managerial policies which have forced us to unite in self defense. Instead, they prefer to attack our association, attack the visible effects of their inequitable treatment, and seek by intimidation and through expensive legal counsel to crush the Foreman's Association of America. And we foremen are supposed to lie down and play dead when confronted with these tactics. Such are the fruits of rugged individ-

nalism, the philosophy that, over a period of years, sowed the seeds of wholesale unionization of American industry.

We cordially invite you unorganized foremen to contact us for information about our association and what it can do for you. You know, just as all other foremen know, that we are now on the short end in the industrial picture. We ask you to consider seriously how much chance you have, acting on your own, to protect yourself from exploitation now or in the future. If you will join up with the twenty thousand of us in this battle for the same legal privileges that the rank and file now enjoy, then we are positive that our combined efforts will make certain that you too will get what you are entitled to. Thank you.

COMPANY'S EXHIBIT NO. 49-MM.

"The Truth Will Out."

May 25th, 1944.

Good evening, ladies and gentlemen. Freedom of speech is one of the important privileges enjoyed by all Americans in this great democracy. Each of us has a right to form opinions and voice our convictions on all controversial issues which confront the nation. All of us are willing to make any necessary sacrifices to retain our way of life, as shown by the world battle which we are now waging with those nations who seek by force to impose their false philosophies of living upon us.

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When thousands of the members of our association walked off the job recently in some plants in this area, we organized foremen received nation-wide publicity. We were treated fairly and impartially by newspaper reporters and were given full opportunity to clarify our position by them. The editorial staffs of a very few newspapers, however, were quite caustic in their comments on our stand, and even though we disagree with most of their conclusions, yet we realized that we were bound to get a certain amount of adverse criticism in such a heated controversy. We will not reply in kind, however, to the one or two obviously prejudiced editorials which used blistering language, for we foremen prefer to confine our remarks to a presentation of facts, rather than an emotional outburst which can only becloud the issue. By so doing we hope to give you a clear picture of the true underlying causes of the unfortunate and untimely strife between us and our employers.

First of all, let's not forget that we foremen tried our best, acting as individuals rather than as a group, to adjust grievances of long standing with our employers. But trying to do so on a "man-to-man" basis got us nowhere on such important grievances as inequitable pay for services rendered; summary discharge without cause and without a hearing; wages in proportion to those working under our supervision; tangled lines of authority; seniority recognition during any necessary lay-offs; regular overtime rates, or any overtime pay at all for overtime work; proper provisions for vacations, and time lost during illness; sensible job classifications, workable grievance procedure for adjustment of disputes; and decent consideration in all matters pertaining to the duties of the job.

It was only as a last resort, after exhausting all other methods, that we decided to form an independent association for our individual and collective welfare. Subsequent events have more than demonstrated the necessity for, and wisdom of this movement.

Prior to May of 1943 we foremen enjoyed the same privileges under the Wagner Act as the rank and file. If we

had not, then there would have been nothing to gain in our banding together. But last May, the National Labor Relations Board suddenly ruled by a two-to-one decision in the Maryland Drydock hearing, that we foremen did not constitute appropriate collective bargaining units in industry within the meaning of the National Labor Relations Act, despite the plain wording of the act itself.

This most unfortunate and unwise ruling encouraged most of our employers to launch out on a determined and bitter campaign of exploitation against us foremen for the express purpose of breaking the back of our association. Discrimination and downright unfair treatment became our lot. Several big employers began to discharge foremen without cause or hearing, simply because they were members of the Foreman's Association of America. Many older foremen who had given the best years of their lives in faithful service were the victims of this ruthless brand of intimidation.

Just what did the employers accomplish by this short-sighted policy? Well—one year has passed, and our membership has more than doubled during this trying period, and we are united, as never before, in our resolve to exercise our legal right of collective bargaining, the one and only way by which we can ever hope to get the kind of treatment which any self-respecting American would demand.

One notable exception to this destructive attitude on the part of many employers is the huge Ford Motor Company. Their officials knew very well that they were not compelled by law to bargain collectively with us, yet they voluntarily met us half way, and, as everyone knows, signed a comprehensive and mutually satisfactory collective bargaining contract with our association this month. We foremen pay unqualified tribute to the fairness and practicality of the Ford management, for theirs is an outstanding example of progressive and enlightened industrial leadership.

Now, starting with last May, we foremen were pushed

around and discriminated against day in and day out, at the very time when we were donating thousands of hours of overtime work and doing our level best for the war effort in all particulars, on the production line, at the Red Cross blood bank, in the purchase and sale of bonds and in numerous other activities. Our employers not only failed to give us credit for these efforts, but continued to exploit and exasperate us at every turn. After all, we are human beings who react to unfair treatment like everyone else. Our patience broke under the strain, causing us to take drastic action to register a protest. There was no other effective method left by which we could secure at least some measure of relief from an intolerable situation.

As a consequence, we are now protected from discrimination and discriminatory discharge, and the War Labor Board has accepted jurisdiction over disputes.

We foremen consider it our duty to keep production going, even though we were forced into doing something which we disliked to do. Proof of that statement can readily be found in the fact that thousands of our members, who stayed on the job in their plants during the crisis, wanted to join the walkout, and had every reason to do so, but remained at work, for we did not want to do any further harm to the production of war materials.

May we call attention to the well-publicized fact that, during the recent blow-up, our employers turned deaf ears to the urging of all government boards and the Army and Navy that they meet with us to settle our difficulties? It is all very well for spokesmen for industrialists to place the blame on the foreman and rave at his lack of patriotism, but the record shows that when the chips were down, we foremen were more than willing to meet with our employers, but that our employers absolutely refused to end the deadlock in that manner; a deadlock created by the tactics of the employers themselves over a period of months.

In his column, "The Low-down on Washington," which

appeared in the Detroit News, May 21st edition, Blair Moody, the well-known columnist, discussed strikes and what could be done by the government to eliminate them. In analyzing the reasons why the politicians have done little or nothing about strikes, he wrote as follows, quote, "One reason is that corporate profits, after taxes, are at their highest level in history, and no one has guts enough to do anything about that, either." Unquote. That being true, just what sacrifice are employers making to win this war? Are they in any position to criticize us foremen for merely asking for fair treatment in their plants?

In the same column dated May 20th, Blair Moody also wrote these words, quote, "A large share of the blame for the foremen's strike which slowed production in Detroit war plants lies not with the Foreman's Association of America, but in Washington . . . look at the spot in which the politicians put the foremen. In some plants they are fairly, even generously handled. In others, they say emphatically, they are not. In some plants they are treated truly as part of management. In others they are paid less than men working for them. When these tried to get more, they were refused. When they tried to organize, the leaders were fired. They appealed to Washington. The National Labor Relations Board told them, first, that they were 'not employes.' But in a second case, involving different circumstances, in a different sense they were told they 'are employes.' They appealed to WLB, which refused to take jurisdiction because it was bound by the first NLRB ruling that they are not employees in the 'organizational sense.' They apeared to have no tribunal to hear their case. So they went on strike. Lay that one to Washington!" Unquote.

Mr. Moody's words need no comment.

In March of last year Representative Smith of Virginia introduced a bill which would have made it a crime, punishable by law, for any foreman to hold membership in any organization, organized for purposes of collective bargaining. Employers, big and little, from all over the

country rushed to Washington to testify in favor of that vicious piece of proposed legislation, but after hearing both sides, the House Military Affairs Committee took no action and the bill died in committee.

Once again the employers are at it. Representative Shafer introduced a bill in the House a few days ago which reads as follows, and we quote: "A bill to amend the War Labor Disputes Act by prohibiting the organization of supervisory employees for purposes of collective bargaining. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that (a) notwithstanding any other provision of law, the rights of employees to self-organization, and to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, shall not extend to supervisory employees of any war contractor. No act or omission of a war contractor with respect to a supervisory employee (actual or prospective) or with respect to a labor organization in which any such employee participates shall be deemed to constitute an unfair labor practice under the National Labor Relations Act. In determining whether a labor organization represents a majority of the employees in the appropriate collective bargaining unit of a war contractor or contractors, supervisory employees shall be disregarded.

(b) As used in this section 'supervisory employee' means—

(1) An employee employed in an executive, administrative, or professional capacity; or

(2) An employee any of whose duties consists of directing or supervising the work or activities of other employees; or

(3) An employee any of whose duties consists of determining or computing the wages of, or the time or other basis on the basis of which wages are paid to, other employees; or

(4) An employee employed as a guard or in any other capacity to protect the property of the employer.'" Unquote.

There you have it. The employers seek by legislation to deprive foremen, timekeepers and guards, of their constitutional rights, instead of making an intelligent effort to correct the causes of the trouble. How can such a bill, even if it were passed, correct the unsatisfactory and trouble-making conditions under which we foremen work? Thank you.

1* **CASE NO. 7-C-1452.**

TRANSCRIPT OF TESTIMONY.

Before the
NATIONAL LABOR RELATIONS BOARD,
Seventh Region.

In the Matter of—	
PACKARD MOTOR CAR COMPANY	Case No. 7-C-1452.
and	
FOREMAN'S ASSOCIATION OF AMERICA.	

Room 859, Federal Building,
Detroit, Michigan,
Monday, July 9, 1945.

Pursuant to Notice, the above-entitled matter came on for hearing at 10:00 A. M.

Before:

Howard Myers, Esq., Trial Examiner.

Present:

David Karasick, Esq., and David Stron, Esq., 1332 National Bank Building, Detroit, Michigan, Attorneys for National Labor Relations Board.

Louis F. Dahling, Esq., of Messrs. Bodman, Longley, Bogle, Middleton & Armstrong, 1400 Buhl Building, Detroit, Attorneys for Respondent.

Walter M. Nelson, Esq., 1438 Dime Bank Building, Detroit, Michigan, Attorney for Foreman's Association of America.

3 PROCEEDINGS.

Trial Examiner Myers: The hearing will come to order. I would like to announce that this is a formal hearing before the National Labor Relations Board in the matter

* Inset numbers appearing at outer edge of text indicate page numbers of original stenographic transcript of testimony.

of Packard Motor Car Company and Foreman's Association of America, Case No. 7-C-1452.

The Trial Examiner appearing for the National Labor Relations Board is Howard Myers.

Will counsel please state their appearances for the record.

Mr. Karasick: David Karasick and David Sitron, for the National Labor Relations Board, 1332 National Bank Building, Detroit 26, Michigan.

Mr. Nelson: Walter M. Nelson, for the Foreman's Association of America.

Mr. Dahling: Louis F. Dahling, 1400 Buhl Building, Detroit, Michigan, attorney for Packard Motor Car Company, the Respondent.

Trial Examiner Myers: Are there any other appearances?

Mr. Nelson: I did not give my address. 1438 Dime Building, Detroit.

Trial Examiner Myers: I would like further to say that the official reporter makes the only official transcript of these proceedings. Citations in briefs or arguments based upon the record, directed to the Trial Examiner or to the Board, must cite the official transcript in all refer-
4 ences to the record. The Board will not certify any transcript other than the official transcript for use in any court litigation.

It may become necessary to make corrections in the record during the hearing. If so, the party desiring the correction will submit the suggested correction to the other party or parties in writing. When this has received their written approval, it will be submitted to the Trial Examiner. In the event the parties are unable to agree upon proposed corrections, the Trial Examiner will then consider motions to correct the record, or, may, upon his own motion, order certain corrections made. If the parties have been unable to agree upon such corrections before the close of the hearing but have entered into a stipulation concerning such matters after the close of the hearing but before the transfer of the case to the Board, such stipulations or motions should be addressed to the Trial Examiner in care of the Chief Trial Examiner in Washington.

After the transfer of the case to the Board, all such communications should be directed to the Board itself.

Concise statements of reasons for motions or objections will be permitted, but the Trial Examiner may go off the record for the purpose of hearing extended argument. Off-the-record discussion or argument will not be included in the official transcript unless an order to that effect be made by the Trial Examiner, either upon the request of any of the parties or upon his own motion. All requests to go off the record are to be directed to the Trial Examiner and not to the official reporter.

The Trial Examiner will allow an automatic exception to all adverse rulings, and upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

Five copies of all pleadings submitted during the hearing are to be filed with the Trial Examiner. All exhibits offered in evidence shall be in duplicate.

At the close of the hearing the Trial Examiner will expect counsel to argue orally, during which argument the Trial Examiner will feel free to discuss with and ask questions of the counsel or representatives of the parties with respect to their contentions as to the issues, the facts, and the legal principles involved. The oral argument will be included in the stenographic report of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief with the Trial Examiner, within five days of the close of the hearing. Five copies of such briefs shall be directed to the Trial Examiner in care of the Chief Trial Examiner in Washington.

During the course of the hearing the Trial Examiner will undoubtedly ask questions of the various witnesses. The Trial Examiner wants counsel to feel free to object to any of his questions, if they think the questions are improper, in the same manner and with the same freedom as if the questions were propounded by counsel.

You may proceed, Mr. Karasick.

Mr. Karasick: Mr. Examiner, I have had certain formal documents in this proceeding marked as Board Exhibits

1 to 5, both inclusive, for identification. These formal documents are as follows:

Board Exhibit 1, for identification, is the charge filed in the Seventh Regional Office of the National Labor Relations Board on June 8, 1945, by Robert H. Keys, President of the Foreman's Association of America;

Board Exhibit 2 for identification, is the Complaint issued by Frank H. Bowen, Regional Director for the Seventh Regional Office of the National Labor Relations Board on June 28, 1945;

Board Exhibit 3 for identification, is the Notice of Hearing in this proceeding for the present date, at the present time and place, which was issued by Frank H. Bowen, Regional Director for the Seventh Regional Office of the National Labor Relations Board, on June 28, 1945;

Board Exhibit 4 for identification, is Affidavit of Service of the Notice of Hearing, Complaint and Charge, copies of which were served upon each of the parties to this proceeding, together with the return postoffice receipts attached thereto;

7 Board Exhibit 5 for identification, is the Answer of Packard Motor Car Company, a Michigan corporation, to Complaint of the Regional Director of the Seventh Region, National Labor Relations Board, subscribed and sworn to by A. G. Denison, Assistant Secretary of the Respondent, on July 6, 1945, and filed in the Seventh Regional Office of the National Labor Relations Board on the same date.

I offer these documents in evidence as Board's Exhibits 1 to 5, both inclusive.

Trial Examiner Myers: Are there any objections, gentlemen?

Mr. Nelson: None by the Union.

Mr. Dahling: None, Mr. Examiner.

Trial Examiner Myers: There being no objection, the documents will be received in evidence and I will ask the reporter to please mark them as Board Exhibits 1 to 5, inclusive.

(The documents above mentioned were marked and received in evidence as Board Exhibits Nos. 1, 2, 3, 4 and 5.)

Mr. Karasick: Mr. Examiner, I would like to state my

understanding of certain stipulations entered into between counsel for the various parties.

It is my understanding that it is stipulated by and between counsel for the Respondent, counsel for the Union and counsel for the Board that the facts and figures with respect to the business operations of the Respondent
8 have been and are presently substantially the same as those found by the Board in a prior proceeding before the Board involving the same parties, being Case No. 7-R-1884, in which the Board issued its Decision and Direction of Election on March 26, 1945;

That the Board may make the same findings of fact with respect to the business operations of the Respondent in this case as were made in Case No. 7-R-1884; and that the Respondent admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

Trial Examiner Myers: Do you so stipulate, Mr. Dahling?

Mr. Dahling: I so stipulate, Mr. Examiner.

Trial Examiner Myers: Do you so stipulate, Mr. Karasick?

Mr. Karasick: I so stipulate, Mr. Examiner.

Trial Examiner Myers: And you, Mr. Nelson?

Mr. Nelson: I do.

Trial Examiner Myers: Very well.

Mr. Karasick: It is also my understanding, Mr. Examiner, that the foregoing parties also stipulate that the charging Union in this case, namely, the Foreman's Association of America is the same Union which filed the petition and appeared as a party before the Board in the proceeding known as No. 7-R-1884, being entitled: "In the Matter of Packard Motor Car Company and Foreman's Association of America."

Trial Examiner Myers: Do you so stipulate, Mr. Dahling?

Mr. Dahling: I so stipulate.

9 Trial Examiner Myers: And you, Mr. Karasick?

Mr. Karasick: Yes, Mr. Examiner.

Trial Examiner Myers: And you, Mr. Nelson?

Mr. Nelson: I do.

Trial Examiner Myers: Very well. Are there any motions addressed to the pleadings?

Mr. Dahling: Mr. Examiner, if Mr. Karasick is finished with his formal proofs—and have you, Mr. Karasick?

Mr. Karasick: Not with the formal proofs, as such, Mr. Dahling. I am finished with introducing the formal documents. If, however, you wish to present a motion at this time, it is perfectly agreeable.

Mr. Dahling: I have prepared and I can submit at this time or later a motion to dismiss, Mr. Examiner and I will serve the original and four copies—I believe that is the number required by the rule?

Trial Examiner Myers: That is right.

Mr. Dahling: And I will hand Mr. Nelson, as attorney for the Foreman's Association, a copy. It is my understanding that the Foreman's Association has also received a copy of the Answer of the Packard Motor Car Company, the respondent. Is that correct, Mr. Nelson?

Mr. Nelson: That is correct.

Trial Examiner Myers: Mr. Nelson says that is correct.

Mr. Dahling: It is, of course, the position of the
10 Packard Motor Car Company that the National Labor Relations Board has no jurisdiction in this matter and our participation in this hearing is not to be considered a waiver of our position.

Trial Examiner Myers: Very well, sir. The reporter will please mark the original motion as Respondent's Exhibit No. 1, for identification.

(The document above referred to was marked for identification as Respondent's Exhibit No. 1.)

Trial Examiner Myers: Do you offer this in evidence, Mr. Dahling?

Mr. Dahling: Why, it is my understanding, of course, that this is a motion made in this proceeding; it is not evidentiary at all.

Trial Examiner Myers: I know that.

Mr. Dahling: And I am offering a motion to dismiss. Now, if under your procedure you desire it to appear as an exhibit in the case, of course, I have no—

Trial Examiner Myers: That is the way the Board usually proceeds.

Is there any objection to this paper going in evidence,

Gentlemen? Hearing no objection, the paper will be received in evidence.

(The document heretofore marked for identification as Respondent's Exhibit No. 1, was received in evidence.)

11 Trial Examiner Myers: Do you want to be heard orally, Mr. Dahling?

Mr. Dahling: Not at this time, sir.

Trial Examiner Myers: Is there any objection to the motion, Mr. Karasick?

Mr. Karasick: I take it, it is clear, Mr. Examiner, that the failure on the part of counsel for the Board to object to the motion to dismiss being received as a document in evidence will not be taken in any way to mean that the counsel for the Board is not objecting to the motion to dismiss on its merits.

Trial Examiner Myers: I have just received the paper in evidence. The paper is not for any other purpose. Now, have you any objection to this motion being granted?

Mr. Karasick: To the motion to dismiss being granted, Mr. Examiner?

Trial Examiner Myers: Yes.

Mr. Karasick: Yes.

Mr. Nelson: The Union objects to the motion to dismiss being granted.

Trial Examiner Myers: I will deny the motion at this time, Mr. Dahling. You may renew your motion at any time during the hearing.

Mr. Dahling: I assumed, Mr. Examiner, it would be denied at this time.

12 Trial Examiner Myers: Are there any other motions addressed to the pleadings?

Mr. Karasick: Mr. Examiner, I have had certain documents marked as Board Exhibits 6 to 11, both inclusive, for identification. These documents are as follows:

Board Exhibit 6 for identification, is a copy of the Decision and Direction of Election issued by the National Labor Relations Board on March 26, 1945, in the matter of Packard Motor Car Company and Foreman's Association of America, Case No. 7-R-1884;

Board Exhibit 7 for identification, is Notice of Election to be held among certain employees of the Packard Motor

Car Company of Detroit, Michigan, on Tuesday, April 17, 1945;

Board Exhibit 8, for identification, is the Certification on Conduct of Election held on April 17, 1945, among certain employees of the Packard Motor Car Company at Detroit, Michigan, in Case 7-R-1884, which contains the signatures of representatives of the Packard Motor Car Company, the Foreman's Association of America and the Regional Director for the Seventh Regional Office of the National Labor Relations Board. This is a certification on conduct of election concerning polling place No. 1, one of the two polling places established as shown in the Notice of Election which has been referred to by the prior exhibit number;

Board Exhibit 9 for identification, is Certification on
13 Conduct of Election with respect to polling place No. 2 in the same election, the same Company, among the same employees, and this exhibit also contains the signatures of representatives of Packard Motor Car Company, the Foreman's Association of America, and the Regional Director for the Seventh Regional Office of the Board;

Board Exhibit 10 for identification, is a duplicate original of the Tally of Ballots with respect to the aforementioned election, issued on April 18, 1945, signed by an agent for the Regional Director, and containing signatures of the representatives of Packard Motor Car Company and Foreman's Association of America;

Board Exhibit 11, for identification, is a copy of the Certification of Representatives issued by the Board on April 28, 1945, in the matter of Packard Motor Car Company and Foreman's Association of America, Case No. 7-R-1884.

I offer these documents in evidence as Board Exhibits 6 to 11, both inclusive.

Trial Examiner Myers: Are there any objections to those papers?

Mr. Dahling: Mr. Examiner, I have no objection to the documents in the sense that they are not authentic. I object to their admission in evidence on the grounds that the various orders and directions and the action taken by

the National Labor Relations Board was over and
14 beyond the jurisdiction conferred upon that Board;
that the persons who are named in the unit are not employees under the National Labor Relations Act; that the entry of the various decisions, orders and certifications was beyond the discretion of the Board and abuse of that discretion.

And, furthermore, that it was unreasonable, arbitrary and amounts to a denial of due process and is void under the Constitution of the United States.

I am merely making this statement so there will be no question of our position in the matter.

Again I am saying, I do not deny the documents were issued.

Trial Examiner Myers: Have you any objection, Mr. Nelson?

Mr. Nelson: No objection by the Union.

Trial Examiner Myers: I will overrule your objection, Mr. Dahling, and receive them in evidence and ask the reporter to please mark them as Board Exhibits 6, 7, 8, 9, 10, and 11, respectively.

(The documents above referred to were marked and received in evidence as Board Exhibits Nos. 6, 7, 8, 9, 10 and 11.)

Mr. Karasick: At this time I would like to state for the record, Mr. Examiner, in the Exhibit 6, copy of Decision and Direction of the Board, there appears in Footnote 6 thereof, in the sixth line, the following statement:

"* * of the 868 dues receipts submitted, 39 bore
15 the names of persons * *" et cetera.

I would like to state that the figure "39" appearing in that line of Footnote 6 is a typographical error and should be 739, as shown by Board Exhibit 21 which was introduced in evidence in the prior proceeding, namely, 7-R-1884, on which Footnote 6 of the Board's Decision is based.

I have called that matter to the attention of counsel for the Respondent and for the Foreman's Association and they agree that my statement is a correct one. Is that correct, Mr. Dahling?

Mr. Dahling: That is correct.

Mr. Karasick: Is that correct, Mr. Nelson?

Mr. Nelson: That is correct.

Mr. Karasick: Now, with that statement; I take it that counsel for the parties do not in any way question the authenticity or accuracy of any of the exhibits I have just introduced as Board's Exhibits 6 to 11, both inclusive. Is that correct, Mr. Dahling?

Mr. Dahling: It is not questioned.

Mr. Nelson: That is right.

Trial Examiner Myers: Is there any objection to the exhibits offered in this proceeding as showing the true facts?

Mr. Dahling: You refer to the figure 39 being changed to 739?

Trial Examiner Myers: That is right.

16 Mr. Dahling: No objection.

Mr. Nelson: No objection.

Mr. Karasick: May I do that physically on the face of the exhibit now, Mr. Examiner?

Trial Examiner Myers: Yes, sir. The only change you are making in Footnote 6 is changing the figure 39 to read 739?

Mr. Karasick: That is correct.

I have had certain documents marked as Board Exhibits 12 to 18, both inclusive, for identification. These documents are as follows:

Board Exhibit 12 for identification is a copy of a letter dated May 2, 1945, addressed to Mr. George T. Christopher, President, Packard Motor Car Company, and sent by Robert H. Keys, National President, Foreman's Association of America;

Board Exhibit 13 for identification is a copy of a letter dated May 11, 1945, addressed to Mr. Robert H. Keys, President, Foreman's Association of America, and signed by George T. Christopher, President Packard Motor Car Company;

Board Exhibit 14 for identification is a copy of a letter dated May 12, 1945, addressed to the same Mr. Christopher and signed by the same Mr. Keys, both of whom were referred to in the prior exhibits just stated;

Board Exhibit 15 for identification is copy of a letter

dated May 18, 1945, addressed to Mr. Keys and
17 signed by Mr. Christopher;

Board Exhibit 16 for identification is copy of a letter dated June 15, 1945, addressed to Packard Motor Car Company and signed by Harold L. Hudson, Field Examiner for the National Labor Relations Board, Seventh Regional Office;

Board Exhibit 17 for identification is a letter dated June 18, 1945, addressed to Packard Motor Car Company and signed by Harold L. Hudson, Field Examiner for the Seventh Regional Office of the National Labor Relations Board;

Board Exhibit 18 for identification is a letter dated June 25, 1945, addressed to Harold L. Hudson, Field Examiner, National Labor Relations Board, Seventh Region, and signed by Bodman, Longley, Rogle, Middleton and Armstrong, by Louis F. Dahling, attorneys for Packard Motor Car Company.

I offer these documents in evidence as Board Exhibits 12 to 18, both inclusive.

Trial Examiner Myers: Are there any objections to the receipt of the exhibits in evidence?

Mr. Dahling: No objection, Mr. Examiner.

Trial Examiner Myers: Mr. Nelson?

Mr. Nelson: No objection.

Trial Examiner Myers: There being no objections, the papers will be received in evidence and I will ask the reporter to please mark them as Board Exhibits Nos. 12, 13, 14, 15, 16, 17 and 18.

18 (The documents above referred to were marked and received in evidence as Board's Exhibits Nos. 12, 13, 14, 15, 16, 17 and 18.)

Mr. Karasick: I would like to ask counsel at this time, Mr. Examiner, if it is admitted that Board Exhibits 12 through 17, both inclusive, are true and accurate copies of the originals; and if it is further admitted by each of the respective counsel that each of these letters was received by the parties to whom they are addressed in a day or two following the date which each letter bears.

Mr. Dahling: Mr. Examiner, the receipt of the letters

is admitted. As to whether these are true copies or not, if Mr. Karasick says they are, I will accept his statement and if we do find any errors in them later on, we can adjust them.

Mr. Nelson: The sending and receiving of the letters by us is admitted and the accuracy of the letters is accepted on Mr. Karasick's statement that they are, and I am sure if there is any material error it can be adjusted.

Trial Examiner Myers: Do you state they are true and accurate, Mr. Karasick?

Mr. Karasick: To the best of my knowledge and belief they are. They have been copied by the stenographic staff of the Regional Office and proof read, and unless there is an inadvertent error, I believe they are correct.

Trial Examiner Myers: Mr. Dahling, do you agree to the statement that the letters addressed to the Company
19 by the Association were received by the Company within a day or two after the dates the letters bear?

Mr. Dahling: Yes, Mr. Examiner.

Trial Examiner Myers: Do you, Mr. Nelson, agree that the letters sent to the Association by the Company were received by the Association within a day or two after the date the letters bear?

Mr. Nelson: I do.

Mr. Karasick: I think, too, that my statement covered two letters sent by the Field Examiner of the Regional Office to the Company and the Company's reply, and that Mr. Dahling so contemplated. Is that not correct?

Mr. Dahling: My statement covered that also.

Mr. Karasick: Thank you.

Trial Examiner Myers: Do you agree, Mr. Karasick, that the letters addressed to the Board by the Company were received by the Regional Office of the Board in a day or two after the date the letters bear?

Mr. Karasick: Yes, Mr. Examiner. May we at this time be off the record?

Trial Examner Myers: Very well, off the record.

(Discussion off the record.)

Trial Examiner Myers: Are you ready, Gentlemen?

Mr. Dahling: Yes, Mr. Examiner.

Mr. Karasick: Yes, Mr. Examiner.

20 Mr. Examiner, I have had marked as Board Exhibit 19, for identification, a mimeographed copy of Report and Findings of a Panel of the National War Labor Board in certain disputes involving supervisors, which, on the first inside page thereof, contains a letter of transmittal to the Honorable William H. Davis, the Chairman of the National War Labor Board, and signed by Sumner H. Slichter, Robert D. Calkins and William H. Spohn, bearing date of January 19, 1945.

I offer this document in evidence as Board Exhibit 19, with the understanding that the original copy is the mimeographed copy which was received from the War Labor Board and the duplicate which I am offering in evidence is a printed copy, it being agreed by the parties that if any variation appears in the two copies that the mimeographed copy from the War Labor Board shall prevail.

Mr. Nelson: Mr. Examiner, to the offer made I have no objection on the ground of competency and the documents have been submitted and we are satisfied that it is the report of the Foremen's Panel of the National War Labor Board and we did participate in that proceeding. I doubt its relevancy or its materiality in this proceeding.

Trial Examiner Myers: Have you any objection, Mr. Dahling?

Mr. Dahling: No objection, Mr. Examiner.

Trial Examiner Myers: What about the objection of Mr. Nelson, Mr. Karasick?

21 Mr. Karasick: I may say this, Mr. Examiner, that the document is being offered because the Board in its Decision and Direction of Election in Case 7-R-1884 took official notice of certain matters contained in the report which is being offered in evidence as Board Exhibit 19. For that reason, I am offering the document in toto in evidence so the Board, for its convenience and the parties for theirs, may have it before them.

Trial Examiner Myers: I will overrule your objection, Mr. Nelson, and I will receive the document in evidence, and I will ask the reporter to please mark it as Board Exhibit 19.

(The document above referred to was marked and received in evidence as Board Exhibit No. 19.)

Mr. Karasick: As a result of an off-the-record discussion, Mr. Examiner, it is stipulated by and between counsel for the respective counsel, counsel for the Foreman's Association and counsel for the Respondent and counsel for the Board, that from the date of the hearing in the prior "R" case, namely, 7-R-1884, up to the present time, no change has occurred in the duties, authority or responsibilities of the persons included in the unit found appropriate by the Board in that proceeding.

Trial Examiner Myers: Do you so stipulate, Mr. Dahling?

Mr. Dahling: That is a correct statement, Mr. Examiner.

Trial Examiner Myers: And you, Mr. Nelson?

22 Mr. Nelson: We so stipulate.

Trial Examiner Myers: And you, Mr. Karasick?

Mr. Karasick: I do, Mr. Examiner.

Trial Examiner Myers: Very well, then.

Mr. Karasick: Mr. Examiner, at this time, the Board rests. But I would like to, also, at this time, make the usual motion to conform the complaint to the proofs with respect to formal matters, such as names, dates or typographical errors which may have appeared in the complaint.

Trial Examiner Myers: Any objection, gentlemen?

Mr. Nelson: No objection.

Mr. Dahling: No objection.

Mr. Examiner, the Respondent again at this time—

Trial Examiner Myers: (Interposing) Just one moment, Mr. Dahling. I will rule on this motion.

Mr. Dahling: Oh, I am sorry, sir.

Trial Examiner Myers: I will grant the motion.

Mr. Dahling: The Respondent, Packard Motor Car Company, renews, at this time, its motion to dismiss the complaint, the copies of the motion having been filed in this proceeding as an exhibit.

Trial Examiner Myers: I will deny the motion, and you may renew it at any time during the hearing.

Are you ready to proceed with your case, Mr. Dahling?

Mr. Dahling: Yes, Mr. Examiner. Pursuant to an

23 off-the-record discussion, it has been agreed and stipulated by Mr. Karasick, representing the Board,

and Mr. Nelson, representing the Foreman's Association of America, that I will make a statement showing certain changes in the managerial structure which have appeared since the hearing in the Representation case.

If you will turn to Page 14 of the Decision and Direction of Election, you will note that there is a listing of the managerial structure of Packard Motor Car Company which relates to the productive and non-productive manufacturing portions of the Company, in which the vast majority of the persons in the unit found appropriate are employed.

Since the hearing in the "R" case, the Manager of the Aircraft Engine Plant and the Assistant Manager of the Aircraft Engine Plant have been changed; that is, those offices have been deleted from the list. In place thereof there is a Vice-President of Manufacturing who now has charge of both the so-called Aircraft Division and the Marine Engine Division. The previous testimony disclosed that they were two separate divisions with two separate heads. Due to this change, which is really being brought about in connection with reconversion, there is now one head of both of those divisions and he is known as the Vice-President of Manufacturing; and under him there is a Factory Manager.

Trial Examiner Myers: May I interrupt a moment and see whether I have this one. You say there is no longer a position known as Manager of the Aircraft Engine Plant?

Mr. Dahling: That is correct, sir.

Trial Examiner Myers: Nor is there now a position known as Assistant Manager of the Aircraft Engine Plant?

Mr. Dahling: That is correct.

Trial Examiner Myers: What about the Night Superintendent of the Aircraft Engine Plant?

Mr. Dahling: Yes, there still is a Night Superintendent of the Aircraft Engine Plant.

Trial Examiner Myers: And an Assistant Superintendent on nights of the Aircraft Engine Plant?

Mr. Dahling: Yes, there is still an Assistant Superintendent on nights at the Aircraft Engine Plant.

Trial Examiner Myers: And there is no longer a posi-

tion known as Manager of the Car and Marine Engine Plant?

Mr. Dahling: That is correct.

Trial Examiner Myers: And there is no longer a position known as Executive Assistant Manager of the Car and Marine Engine Plant?

Mr. Dahling: The title to that position has been changed and it is now held by the person who is designated as the Assistant to the Vice-President of Manufacturing.

Trial Examiner Myers: Those are the only changes?

Mr. Dahling: Those are the only changes until we
25 come to the number of foremen. I indicated, of course, that the Manager of the Aircraft Engine Plant and the Assistant Manager of the Aircraft Plant have been deleted, but that we have in place a Vice-President in Charge of Manufacturing and a Factory Manager. So we still have the two persons in relatively the same jobs except with a broader scope.

Trial Examiner Myers: Are they the same persons who formerly held the positions known as Manager and Assistant Manager of the Aircraft Engine Plant?

Mr. Dahling: Mr. Brown, who was the manager of the Aircraft Engine Plant, has resigned. The Manager, or the person who was the Manager of the Car and Marine Engine Plant, a Mr. Rifle, is now the Vice-President of Manufacturing, and has taken over direct charge of the two divisions, the Aircraft and the Marine Engine, and, as I stated, one of his chief assistants is the Factory Manager, a Mr. Bird, who was the Assistant Manager of the Aircraft Engine Plant.

Now, the change in the number of foremen is as follows: —these changes are the result of working toward reconversion and were not brought about because of the activities of the Foreman's Association of America or because of any relationship with the Foreman's Association.

Trial Examiner Myers: Do you so stipulate to that last statement?

Mr. Nelson: That is true, as we believe.

26 Trial Examiner Myers: And you, Mr. Karasick?

Mr. Karasick: I have no knowledge of the fact, Mr. Examiner, but if Mr. Dahling and Mr. Nelson are willing to so stipulate, I will take their word for it.

Mr. Nelson: That is to say, it is a change that would have been brought about had there been no petition, no election, or no proceeding at all.

Trial Examiner Myers: It was not brought about because of any unfair practices?

Mr. Nelson: No, we are making no charge in that connection and I accept Mr. Dahling's explanation of the reason for the change.

Trial Examiner Myers: Just business reasons?

Mr. Nelson: Just business reasons that would probably have occurred regardless of the organization before.

Trial Examiner Myers: Is that your position, too, Mr. Karasick?

Mr. Karasick: Yes. The Board is not charging, Mr. Examiner, that these changes constitute unfair labor practices.

May I interrupt Mr. Dahling?

Trial Examiner Myers: If Mr. Dahling does not mind.

Mr. Dahling: I do not object, Mr. Examiner.

Mr. Karasick: Since we are in the position of stipulating part of this matter, I would like to ask Mr. Dahling if my assumption is correct that the statements he is
27 now making, and will complete, with regard to the changes in operations, he is making for the sole purpose of bringing the record up to date before the Board and that he is not contending that these changes in operations constitute a reason for refusal to bargain with the Foreman's Association of America. Is that correct?

Mr. Dahling: That is substantially correct. The only purpose is to bring the record up to date. There have been certain changes and it is merely a factual statement.

Mr. Nelson: Does this statement apply, as well, to the foreman?

Mr. Dahling: That is correct. It is merely to bring the record up to date and show the number of foremen we now have as compared with the number we had at the time of the R case mentioned.

Now, getting down to Page 14 of the Decision and Direction, there are presently, that is, as of July 1, 1945, the same number of managers of divisions, to-wit: Sixteen; there are the same number of assistant managers of divi-

sions, to-wit: Thirty-two; the same number of superintendents of divisions—twenty; the same number of general foremen—One hundred Twenty-five. There are, at present, 592 foremen as against 643, as shown on the list; 284 assistant foremen as against the 273 shown on the list.

Trial Examiner Myers: You say the number of
28 assistant foremen has increased?

Mr. Dahling: Increased, yes. And there are 54 special assignment men.

Trial Examiner Myers: As against 65?

Mr. Dahling: As against 65. On July 1, 1945, there were also 24,201 employees as against a total of 32,533 at the time of the hearing in the "R" case.

Trial Examiner Myers: May I have that number again?

Mr. Dahling: 24,201. I might say at this time that it is the hope, and the Packard Motor Car Company is working in the direction of a total employment of 28,000 when it comes to complete reconversion, but at the present time it is 24,201.

Trial Examiner Myers: Do you so stipulate, Mr. Karasick, regarding the elimination of the managers and assistant managers of the Aircraft Engine Plant and the managers of the Car and Marine Engine Plant, and the assistant managers of the Car and Marine Engine Plant, and that in their place there is now a position known as Vice-President in Charge of Manufacturing and his Assistant?

Mr. Karasick: I will stipulate, Mr. Examiner—

Trial Examiner Myers: (Interposing) Wait. And that the number of foremen, assistant foremen and special assignment men has changed in accordance with the figures given us by Mr. Dahling?

Mr. Karasick: I will stipulate, Mr. Examiner, that
29 if the Respondent called a witness, he would testify, in substance, as stated by Mr. Dahling.

Trial Examiner Myers: Do you so stipulate, Mr. Nelson?

Mr. Nelson: I stipulate that if witnesses were called they would so testify and that would include the total number of employees, as well as the matters stated by you.

Trial Examiner Myers: That is agreeable to you, Mr. Dahling?

Mr. Dahling: That is agreeable, sir.

Trial Examiner Myers: Very well.

Mr. Dahling: Will you mark this Respondent's Exhibit 2.

(The document above referred to was marked for identification as Respondent's Exhibit No. 2.)

Mr. Dahling: I offer in evidence, Mr. Examiner, a statement which purports to have been issued by Sam Sponseller, CIO Regional Director, at Cleveland, on the subject of "CIO Opens Membership to Foremen and Supervisors." It is my understanding, in discussing the matter with Mr. Nelson, that he will admit that this publication was made by Mr. Sponseller, but he will take the position, I assume, that it is incompetent and irrelevant.

Mr. Nelson: Mr. Examiner, on the offer I did not mean to question the competency to the extent of questioning the fact that Mr. Sponseller made the publication, or anything like that. I relieved counsel of the necessity of producing persons to testify by stipulating that if a witness were produced he would testify to the effect that Mr. Sponseller did make this publication.

As to the relevancy and the materiality of it, however, I object. I say it is nothing more than the expression of an opinion of an outside party over whom I have no control, and perhaps no influence whatever, and it is no more than any other opinion any other citizen might express on the organization of foremen in the steel mills, or wherever it might be. It is irrelevant and immaterial to the issues in this case.

Trial Examiner Myers: Mr. Karasick, have you any objection to this paper going into evidence?

Mr. Karasick: I am willing to agree with counsel, Mr. Examiner, that the statement contains—

Trial Examiner Myers: (Interposing) Which counsel?

Mr. Karisck: Both counsel, Mr. Dahling and Mr. Nelson. (Continuing) —that the statement contains, in substance, a publication by Mr. Sponseller. However, I do not regard the matter contained therein as being material or relevant.

Trial Examiner Myers: Is there any question about this paper being issued by the Congress of Industrial Organizations on or about the date it bears?

Mr. Karasick: According to information furnished me by Mr. Nelson during our off-the-record discussions on the matter, he indicates that probably such a publica-
31 tion was made on or about that date. Is that correct, Mr. Nelson?

Mr. Nelson: That is a correct statement of our discussion.

Trial Examiner Myers: There is no doubt the CIO issued it?

Mr. Nelson: Not the CIO; the Steel Workers Organizing Committee—wait a minute. Is that the CIO?

Trial Examiner Myers: Yes.

Mr. Nelson: Yes, that is right. The CIO Regional Director in Cleveland probably issued that publication.

Trial Examiner Myers: You say "probably"?

Mr. Nelson: I have admitted he did. I have not put Mr. Dahling to any trouble about the publication. I said that before. I do, however, object to it on the ground of materiality and relevancy.

Mr. Karasick: I want to make my position clear here. I regard it as immaterial and irrelevant but I do accept the statement of both counsel that the publication was issued.

Trial Examiner Myers: I will overrule the objection and receive the paper in evidence.

(The document heretofore marked for identification as Respondent's Exhibit 2, was received in evidence.)

Mr. Dahling: I would like also to offer, Mr. Examiner, copy of a statement appearing in the Pittsburgh Press on May 27, 1945, which contains quotations of the two
32 policies and action taken by the CIO-United Steel Workers of America Union Executive Board.

It is my understanding that Mr. Nelson, for the purpose of this record, will admit that it contains a statement of the published position of the Union mentioned.

Trial Examiner Myers: Is there any objection, Gentlemen?

Mr. Nelson: I have made the agreement Mr. Dahling has stated, namely, that it is a published position, a published statement of the position taken by the Union mentioned.

Trial Examiner Myers: The Steel Workers?

Mr. Nelson: The Steel Workers Organizing Committee. And that the parties that it purports to come from did publish such a publication on or about the date stated.

Trial Examiner Myers: That is, on or about May 27, of this year?

Mr. Nelson: Yes, I think so. I am not sure of the date, of course. But I want to add to that, my objection to the receipt in evidence of the exhibit as immaterial and irrelevant to the issues in this matter.

Trial Examiner Myers: Do you agree, Mr. Karasick, that the statement was issued by the Steel Workers on or about May 27, 1945?

Mr. Karasick: On the basis of the information furnished me by counsel, as is true of the previous document, I am willing to so stipulate, Mr. Examiner.

33 Trial Examiner Myers: And your position is the same to this proffered exhibit as it was to Respondent's Exhibit 2?

Mr. Karasick: Yes; I regard the matter contained therein as immaterial and irrelevant.

Trial Examiner Myers: Very well. I will overrule the objection of counsel and receive the paper in evidence, and ask the reporter to please mark it Respondent's Exhibit No. 3.

(The document above referred to was marked and received in evidence as Respondent's Exhibit No. 3.)

Mr. Dahling: I would then offer in evidence a copy of a statement which appeared in a magazine or paper called "The Searchlight," the official publication of the UAW-CIO—or I guess it is the CIO-UAW—Local 659, of Flint, Michigan, on March 1, 1945.

It is my understanding that the fact of publication will be admitted by counsel for the Board and by Mr. Nelson, counsel for the Foreman's Association, but that they will take the position it is irrelevant and immaterial.

Mr. Nelson: Mr. Examiner, the fact of publication, we admit. We do, however, object on the ground that it is immaterial and irrelevant.

And may I just briefly say that, of course, I would see

no end to the publications, editorials or articles that might be introduced and if we got into a debate on who published what, we would be here a very long time. I
34 believe there has been a good deal said about the publications issued in these proceedings already and I do not think these editorials, letters, publications or resolutions of the various boards, even in the Labor movement so-called, are relevant and material to the issues in these proceedings.

Trial Examiner Myers: What about this, Mr. Dahling, Respondent's Exhibit 4 for identification?

Mr. Dahling: It has been, of course, the position of the Respondent, at all times, that the Foreman's Association of America was not independent, could not remain independent, that the officers of the Association would have to play hand-in-hand with the officers of the larger unions, and that consequently you would have a situation develop, and develop in a hurry, where people—

Trial Examiner Myers: I understand that. I do not like to interrupt you, Mr. Dahling, but I mean as to this exhibit—

Mr. Dahling: This exhibit is a very recent indication of the trend. The document is an excerpt from a CIO official newspaper circulated among the CIO union members and it clearly indicates the position they take, the CIO workers in Flint, Michigan, which is not far from Detroit, in connection with the organization of these foremen. It is the position, as you know, of the Packard Motor Car Company that such an Association would bring about an intolerable
35 situation, resulting in the Management having to take from foremen the responsibilities and duties they now have, and it would be used as the basis of an argument along that line, and, therefore, I think it is perfectly competent.

Trial Examiner Myers: Yes, but I mean there is nothing in this article that I can see, at the present time, that suggests that the Association become affiliated with some national association.

Mr. Dahling: No, but the close tie-up of the Foreman's Association with the CIO is definitely borne out through

the fact that the article practically threatens reprisals against foremen who do not join the Foreman's Association of America.

Now, favors granted, of course, will be returned. They are all going to be in one happy family—I do not think it will be very happy, but in one family, and that it will not be so far distant in the future. This excerpt is simply an indication of how far they are going.

Trial Examiner Myers: It might make a better showing if Otto Ramlow is described. Who is he?

Mr. Dahling: I am not particularly interested in that part of the excerpt.

Mr. Nelson: By way of illustration in these offers by the Company: The man in charge of that organizing is in this court room; there is not a single member of the Association still up there, still we are confronted with this:

36 We have 300 members up there and he is trying to get another hundred to join, when the fact is we have no members up there at all. Now, what are we going to do about such publications?

Trial Examiner Myers: You mean at the Chevrolet Plant?

Mr. Nelson: Yes; we have no members up there. This article, on the facts, is absolutely erroneous. We do not have even a shell of an organization up there. They happen to know our organizer's name—Kelley, and that is his name all right. We will welcome voluntary members of the Association, that is true. But here we are supposed to have a substantial nucleus and put pressure on everybody. This, on the facts, is, as I said, absolutely erroneous. Now, if we go on with these publications where would we ever end? We would have to meet them all.

Trial Examiner Myers: You are not offering this document saying that the statement in there is true?

Mr. Dahling: No, I merely state that it is an edi or l published by the CIO Union.

Mr. Karasick: May I say for the record, Mr. Examiner, I would like Mr. Nelson to explain what he meant when he referred to the fact that the organizer for that group is here in this court room; which organizer does he mean?

Mr. Nelson: I will be very happy to do that. The main organizing efforts in this particular place—

Trial Examiner Myers: (Interposing) You mean at the Chevrolet Plant?

37 Mr. Nelson: Yes. The organizer for the Foreman's Association up there is in the court room. This is just as much a surprise to him as it was to me. I am fairly familiar, of course, with the petitions being filed; I would be unable to see each and every one of them, but I am more or less familiar with them. I am greatly surprised at this—we have 300 members where we would be very happy to have 30. I do not want, of course, to make that a part of this record, but I stated to the Examiner these facts simply as illustrating my objection to the relevancy and materiality of these articles and the difficulties we will be confronted with before we know it.

Trial Examiner Myers: Mr. Dahling is only offering this to show that the Foreman's Association is receiving either moral or other support from the CIO. Is that right, Mr. Dahling?

Mr. Dahling: That is correct, sir.

Trial Examiner Myers: You take the same position, Mr. Karasick, as you took to the other two exhibits which were offered by Mr. Dahling, that is, Respondent's Exhibits 2 and 3, I assume?

Mr. Karasick: Correct, Mr. Examiner. I agree with the stipulation entered into between the counsel for the respective parties. I am not objecting to the exhibit as such. I do regard it in its form as immaterial and irrelevant.

38 Trial Examiner Myers: That is your position?

Mr. Karasick: That is correct.

Trial Examiner Myers: I will overrule Mr. Nelson's objection and receive the paper in evidence and ask the reporter to please mark it as Respondent's Exhibit No. 4.

(The document above referred to was marked and received in evidence as Respondent's Exhibit No. 4.)

Mr. Dahling: May I request the permission of the Examiner to take the exhibit and have a copy made? I had forgotten to have an extra copy made, and I will deliver it or mail it to the reporter tomorrow morning.

Trial Examiner Myers: Very well.

Mr. Dahling: Thank you, sir.

It is my understanding, Mr. Examiner, that under the Statute the record in the "R" case will, of course, be the record in this particular case.

Trial Examiner Myers: It has just occurred to me, and I was going to suggest it, that perhaps it would be best to offer in evidence the entire record in that other case.

Mr. Dahling: That is the point I am making: If there is any question as to that, I would think it should be stipulated by the parties that the complete record in the "R" case, which is case No. 7-R-1884, would be considered as part of the record in this proceeding, including the
39 oral arguments held in Washington in February of this last year.

Mr. Nelson: You mean February of this year?

Mr. Dahling: Yes, this year, 1945.

Mr. Karasick: I am willing to stipulate, of course, Mr. Examiner, that the record in this case shall include, and be considered a part of this record, the transcript and exhibits, as well as the transcript of the oral argument, in Case 7-R-1884.

Trial Examiner Myers: You mean the oral argument before the Board?

Mr. Karasick: Yes; Mr. Dahling, Mr. Nelson and I have stipulated that the transcript be included within what is regarded as constituting the record in this case, within the terms of the Statute. Is that correct, Mr. Dahling?

Mr. Dahling: Yes, just so there is no question but what the record of Case 7-R-1884 is a part of this record; otherwise, there is no record here.

Trial Examiner Myers: In other words, I understand the positions of the parties herein to be that the entire record before the Board in the matter of Packard Motor Car Company and Foreman's Association of America, Case No. 7-R-1884, be deemed to be a part of the record in this case.

Mr. Karasick: May we be off the record for a moment?

Trial Examiner Myers: Off the record.

(Discussion off the record.)

40 Trial Examiner Myers: On the record.

Will the reporter please read my last statement.

(Record read by the reporter as follows:

"Trial Examiner Myers: In other words, I understand the positions of the parties herein to be that the entire record before the Board in the matter of Packard Motor Car Company and Foreman's Association of America, Case No. 7-R-1884, be deemed to be a part of the record in this case.")

Is that right, Mr. Dahling?

Mr. Dahling: That is right, sir.

Trial Examiner Myers: Is that right, Mr. Karasick?

Mr. Karasick: That is right.

Trial Examiner Myers: Is that right, Mr. Nelson?

Mr. Nelson: That is right.

Mr. Dahling: Does the record now disclose that the oral argument is to be considered a part of this transcript?

Trial Examiner Myers: Is that right? Is that your understanding, Mr. Karasick?

Mr. Karasick: That is my understanding, Mr. Examiner.

Trial Examiner Myers: Mr. Nelson?

Mr. Nelson: It is my understanding. But I wanted to note a formal objection to the materiality and relevancy of the oral argument before the Board in February, 1945, and I make such an objection now.

41 Trial Examiner Myers: Very well, I will overrule the objection.

Mr. Karasick: May I say this, so we will be perfectly clear and our stipulation does not become more restrictive than it should be, that in referring to the record in the prior proceeding each of us intended to mean the transcript and the exhibits in the former "R" case, is that correct?

Trial Examiner Myers: Everything the Board had before it when the Board made its decision in the 7-R-1884 case. Is that right?

Mr. Dahling: That is right.

Mr. Karasick: Yes.

Trial Examiner Myers: And you agree to everything except the transcript of the oral argument, Mr. Nelson?

Mr. Nelson: That is right, and I object to that on the ground of irrelevancy and immateriality.

Trial Examiner Myers: Very well.

Mr. Dahling: I have nothing further to offer?

Trial Examiner Myers: The Respondent rests?

Mr. Dahling: The Respondent rests.

Trial Examiner Myers: Have you any witnesses you wish to call, Mr. Nelson?

Mr. Nelson: None, Mr. Examiner.

Trial Examiner Myers: Have you any evidence you wish to submit?

42 Mr. Nelson: None.

Trial Examiner Myers: Mr. Karasick, have you any witnesses you wish to call?

Mr. Karasick: None, Mr. Examiner.

Trial Examiner Myers: Have you any other evidence you wish to submit?

Mr. Karasick: None.

Trial Examiner Myers: Mr. Dahling, have you any witnesses you wish to call?

Mr. Dahling: No, Mr. Examiner.

Trial Examiner Myers: Or any other evidence you wish to submit?

Mr. Dahling: No, sir.

Mr. Karasick: At this time, Mr. Examiner, I would like to renew the motion previously made; I mean, the complaint to conform with the proofs, following the Respondent's presentation of its case in the same manner as previously stated.

Trial Examiner Myers: You are moving to conform the pleadings?

Mr. Karasick: Yes.

Mr. Nelson: You said "complaint" only.

Trial Examiner Myers: What are you moving to conform?

Mr. Karasack: I am moving to conform the complaint to the proofs with regard to the formal matters, as previously stated, and I renew that motion at this time,

43 following Respondent closing its case.

Mr. Nelson: The Union would like the benefit of that motion without restating it.

Trial Examiner Myers: You mean you do not oppose the motion?

Mr. Nelson: No, I do not.

Trial Examiner Myers: Have you any objection, Mr. Dahling?

Mr. Dahling: No objection, sir.

Trial Examiner Myers: The motion is granted.

Mr. Dahling: I would now, of course, renew my motion to dismiss, which I stated before.

Trial Examiner Myers: I will reserve decision on your motion to dismiss, Mr. Dahling.

Do you move to conform the answer to the proofs?

Mr. Dahling: Yes, I so move.

Mr. Karasick: No objection. May we be off the record?

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Trial Examiner Myers: On the record.

Have you any other motion, Mr. Karasick?

Mr. Karasick: No. May we be off the record again?

Trial Examiner Myers: Off the record.

(Discussion off the record.)

Trial Examiner Myers: On the record. Does anybody wish to call any witnesses or offer any other evidence?

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Mr. Karasick: The Board does not, Mr. Examiner.

Trial Examiner Myers: Mr. Dahling?

Mr. Dahling: The Respondent does not.

Trial Examiner Myers: And the Association?

Mr. Nelson: The Union does not.

Trial Examiner Myers: What about oral argument, Gentlemen? Would you like to have oral argument now or do you wish to submit a brief?

Mr. Dahling: Mr. Examiner, I had not intended to make oral argument. The arguments of the Respondent, of course, are set forth quite fully in the brief that was filed in the Representation case. It is my intention, however, to file a brief with the Board after the intermediate report has been filed.

I would be very happy, however, if there is any point you would care to have a brief on, to furnish you with my ideas and thoughts on it.

Trial Examiner Myers: That is up to you, or do you think I should consider the brief which you previously submitted to the Board?

Mr. Dahling: Our record in this case, of course, is based upon the record and briefs filed in that case and my thought, frankly, is, for the purpose of an intermediate report, that probably would be sufficient.

Trial Examiner Myers: Very well, sir.

Mr. Dahling: I would be very happy to file anything further you would care to have filed for your information at any time, if you should desire further information.

Trial Examiner Myers: Very well, if I find a brief will be helpful later on, I will communicate with you.

Do you wish to file a brief, Mr. Nelson?

Mr. Nelson: No; I think the brief filed in the "R" case might be helpful. I suggest it.

Trial Examiner Myers: What about you, Mr. Karasick, do you wish to file a brief with me?

Mr. Karasick: Counsel for the Board has no present intention of filing a brief.

Trial Examiner Myers: Very well. Is there anything else you gentlemen wish to take up with me before I declare the hearing closed? Hearing no request, I declare the hearing closed.

(Whereupon, at 12:45 P. M., Monday, July 9, 1945, the hearing in the above-entitled matter was closed.)

BOARD'S EXHIBIT NO. 1.

United States of America

Before the National Labor Relations Board,

Seventh Region.

In the Matter of—

PACKARD MOTOR CAR COMPANY
(Name of company)

and

FOREMAN'S ASSOCIATION OF AMERICA
(Name of charging party)

Case No. 7-C-1452

Charge.

(Date filed June 8, 1945.)

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Packard Motor Car Company at 1580 East Grand Boule-
(Full name of company) (Address of establishment)
vard, Detroit, Michigan, employing 30,000 workers in manu-
(Number)
facture of automobiles, trucks, aircraft engines and
(Type of business)
ordnance has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that the said Packard Motor Car Company refused on or about May 18, 1945, and has at all times since refused to bargain with the said Foreman's Association of America as exclusive representative of certain of its employees for the purposes of collective bargaining notwithstanding that the said Foreman's Association of America had been certified by the Board as such representative on April 28, 1945.

Board's Exhibit No. 1

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

FOREMAN'S ASSOCIATION OF AMERICA,
515 Barlum Tower,
Detroit 26, Mich. CA. 2828.

By: ROBERT H. KEYS,
President.

WALTER M. NELSON,
1438 Dime Building,
Detroit 26, Mich. RA. 8351.
Attorney.

Subscribed and sworn to before me this 7th day of June, 1945, at Detroit, Michigan.

HAROLD A. CRANEFIELD,
Regional Attorney, NLRB.

BOARD'S EXHIBIT NO. 2.

United States of America
Before the National Labor Relations Board,
Seventh Region.

In the Matter of— PACKARD MOTOR CAR COMPANY and FOREMAN'S ASSOCIATION OF AMERICA.	Case No. 7-C-1452

Complaint.

It having been charged by Foreman's Association of America, a labor organization, hereinafter sometimes called the Association, that Packard Motor Car Company, a corporation, herein called respondent, has engaged in and is engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 49 Stat. 449, herein called the Act, the National Labor Relations Board, herein called the Board, by its Regional Director for the Seventh Region, as agent of the Board, designated by National Labor Relations Board Rules and Regulations, Series 3, as amended, hereby issues its Complaint and alleges as follows:

1. Respondent is and at all times hereinafter mentioned, was a corporation organized under and existing by virtue of the laws of the state of Michigan, having its principal office and place of business in the city of Detroit, Michigan. Prior to 1941 respondent was engaged at several manufacturing plants in the said city of Detroit in the manufacture and sale of automobiles. Since 1941 respondent's manufacturing facilities have been devoted principally to the manufacture of a variety of items for the armed forces of the United States and powers associated with the United

States in the prosecution of the current war, a large part of such production consisting of marine and aircraft engines. Respondent is at the present time engaged almost exclusively in war production.

2. In the course and conduct of its business as aforesaid, respondent causes and has continuously caused over a long period of time, substantial quantities of raw materials and equipment used in the manufacture of its products, amounting annually to more than $5,000,000 in value, to be purchased and transported in interstate commerce from and through states of the United States other than the state of Michigan, to its plants in the city of Detroit, Michigan, and causes and has continuously caused large quantities of products manufactured by it, amounting annually to more than $5,000,000 in value, to be sold and transported in interstate commerce from its plants in the city of Detroit, Michigan, to, into and through states of the United States other than the state of Michigan.

3. Foreman's Association of America is a labor organization as defined in subsection (5) of Section 2 of the National Labor Relations Act.

4. All general foremen, foremen, assistant foremen and special assignment men employed by respondent at its plants in Detroit, Michigan, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

5. On March 26, 1945, the Board determined, as a result of an investigation conducted by it pursuant to authority vested by Section 9 (c) of the Act, the said proceeding having been entered on the Board's dockets as "In the matter of Packard Motor Car Company and Foreman's Association of America, Case No. 7-R-1884", and as shown by its Decision and Direction of Election made and entered in the course of said proceeding on said date, that the employees referred to in Paragraph 4 above constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to the said employees of respondent the full benefit of their right to self-organiza-

tion and to collective bargaining and otherwise effectuate the policies of the Act. Copies of the said Decision and Direction of Election were thereafter duly served on respondent and the Association. On April 28, 1945, the Board certified, as shown by its Certification of Representatives issued on said date, that pursuant to its aforesaid Decision and Direction of Election of March 26 an election by secret ballot had been conducted on April 17, 1945, among the employees in the aforesaid bargaining unit; that the Association had been designated and selected by a majority of the said employees and was, pursuant to Section 9 (a) of the Act, the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment. Copies of the said certification of representatives were thereafter duly served on respondent and the Association.

6. At all times since April 17, 1945, the Association has been the exclusive representative of all the employees in the bargaining unit described in Paragraph 4 above for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

7. On May 18, 1945, respondent, being then and at all times since engaged at its Detroit plants as described in Paragraphs 1 and 2 above, though requested by the Association so to do, refused to bargain collectively with the Association as the exclusive representative of the employees in the bargaining unit described in Paragraph 4 above and respondent has at all times since refused and now refuses to bargain collectively with the Association as the exclusive representative of the said employees for the purposes of collective bargaining.

8. By its refusal and continuing refusal to bargain with the Association as set forth in Paragraph 7 above respondent did engage and is engaging in unfair labor practices within the meaning of subsection (5) of Section 8 of the Act.

Board's Exhibit No. 2

9. By the acts set forth in Paragraph 7 respondent has interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed to them in Section 7 of the Act and has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of subsection (1) of Section 8.of the Act.

10. The acts of respondent as set forth in Paragraph 7 above occurring in connection with the operation of respondent's business as set forth in Paragraphs 1 and 2 above have a close, intimate and substantial relation to trade, traffic and commerce among the several states, and have led to and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

11. The acts of respondent hereinbefore set forth constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (5) and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board, on this 28 day of June, 1945, issues this, its Complaint against Packard Motor Car Company, a corporation, respondent herein.

FRANK H. BOWEN,
Regional Director, Seventh Region
National Labor Relations Board

(Seal)

BOARD'S EXHIBIT NO. 3.

United States of America

Before the National Labor Relations Board,

Seventh Region.

In the Matter of—

PACKARD MOTOR CAR COMPANY

and

FOREMAN'S ASSOCIATION OF AMERICA.

Case No. 7-C-1452

Notice of Hearing.

Please Take Notice that on the 9th day of July, 1945, at ten o'clock in the forenoon of said day, in Room 859, Federal Building, Detroit, Michigan, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Charge upon which the Complaint is based is attached hereto.

You are further notified that you have the right to file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an answer to the said Complaint within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

Board's Exhibit No. 5

In Witness Whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Seventh Region on this 28th day of June, 1945.

FRANK H. BOWEN,
Regional Director,
Seventh Region, National Labor
Relations Board.

(Seal)

BOARD'S EXHIBIT NO. 5.

United States of America

Before the National Labor Relations Board,
Seventh Region.

In the Matter of—

PACKARD MOTOR CAR COMPANY
and
FOREMAN'S ASSOCIATION OF AMERICA.

Case No. 7-C-1452

Answer of Packard Motor Car Company, a Michigan Corporation, to Complaint of Regional Director, Seventh Region, National Labor Relations Board.

Now Comes Packard Motor Car Company, a Michigan corporation, the respondent in the above entitled proceeding and without admitting the jurisdiction of the National

Board's Exhibit No. 5

Labor Relations Board in this matter or its right, power or authority to issue the Complaint, by way of answer to said Complaint says:

1. Answering paragraph 1 of said Complaint, this respondent admits that the allegations of fact therein contained are substantially correct.

2. Answering paragraph 2 of said Complaint, this respondent admits that the allegations of fact therein contained are substantially correct.

3. Answering paragraph 3 of said Complaint, this respondent denies the allegations therein set forth.

4. Answering paragraph 4 of said Complaint, this respondent denies the allegations therein set forth.

5. Answering paragraph 5 of said Complaint, this respondent denies that the Board had any authority vested in it by Section 9 (c) of the Act, to make any investigation in the proceeding entitled "In the Matter of Packard Motor Car Company and Foreman's Association of America, Case No. 7-R-1884." Respondent admits that a document entitled a "Decision and Direction of Election" was made and entered in the above mentioned proceeding from which it appeared that the majority of the Board purported to find that the persons referred to in paragraph 4 of the Complaint constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to the said persons the full benefit of their right of self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

Respondent admits that on April 28, 1945, the Board certified as shown by an instrument entitled "Certification of Representative" issued on that date that pursuant to the decision and direction of election of March 26, an election by secret ballot had been conducted on April 17, 1945, among the persons alleged to comprise the aforesaid bargaining unit and that the Association had been designated and selected by a majority of said employees and

was, pursuant to Section 9 (a) of the Act the exclusive representative of all such employees for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

Respondent admits that a copy of the said Decision and Direction of Election and a copy of the said Certification of Representatives were duly received by it but as to whether or not copies of these instruments were served on the Association this respondent is without knowledge and therefore neither admits nor denies said allegation.

Further answering paragraph 5, this respondent denies that the National Labor Relations Board had any power, authority or jurisdiction to hold or conduct any hearing in Case No. 7-R-1884 or to issue any decision or direction or to order or direct the holding of any election or to issue any certification or order thereon and this respondent states that the findings and determination and the directions and orders of the National Labor Relations Board in the so-called "Decision and Direction of Election" of March 26, 1945, and the so-called "Certification of Representatives" referred to in said paragraph 5 are unconstitutional, without legal force or effect, are wholly void and are not binding on the Packard Motor Car Company and this respondent therefore denies that the Foreman's Association of America has ever been legally elected the exclusive bargaining agent of any employees of the respondent.

6. Answering paragraph 6 of said Complaint, this respondent denies the allegations therein set forth.

7. Answering paragraph 7 of said Complaint, this respondent admits that the allegations of fact therein contained are substantially correct.

8. Answering paragraph 8 of said Complaint, this respondent denies the allegations therein set forth.

9. Answering paragraph 9 of said Complaint, this respondent denies the allegations therein set forth.

Board's Exhibit No. 5

10. Answering paragraph 10 of said Complaint, this respondent denies the allegations therein set forth.

11. Answering paragraph 11 of said Complaint, this respondent denies the allegations therein set forth.

Wherefore, this respondent prays that said Complaint be forthwith dismissed.

PACKARD MOTOR CAR COMPANY,

By A. G. DENISON,
Its Assistant Secretary,
1580 E. Grand Boulevard,
Detroit, Michigan.

State of Michigan }
County of Wayne } ss.

On this 6th day of July, A. D. 1945, before me personally appeared A. G. Denison, who being first duly sworn, did depose and say that he is the Asst. Secretary of Packard Motor Car Company, a Michigan corporation, and that he has subscribed the foregoing Answer on behalf of said corporation, and is duly authorized so to do, and that the matters therein contained are true of his own knowledge, except as to such as are therein stated to be upon information and belief, and as to such matters, he believes it to be true.

LILLIAN BAIRD,
Notary Public, Wayne County, Michigan.

(Seal) My commission expires May 16, 1947.

BOARD'S EXHIBIT NO. 6.

United States of America.

Before the National Labor Relations Board.

In the Matter of PACKARD MOTOR CAR COMPANY and FOREMAN'S ASSOCIATION OF AMERICA	Case No. 7-R-1884

Mr. David Karasick, for the Board.

Bodman, Longley, Bogle, Middleton and Armstrong, by Mr. Louis F. Dahling, of Detroit, Mich., and Beaumont, Smith and Harris, by Mr. Percy Donovan, of Detroit, Mich., for the Company.

Mr. Walter M. Nelson, of Detroit, Mich., for the Association.

Mr. Seymour J. Spelman, of counsel to the Board.

DECISION AND DIRECTION OF ELECTION.

STATEMENT OF THE CASE.

Upon a petition duly filed by Foreman's Association of America, herein called the Association, alleging that a question affecting commerce had arisen concerning the representation of employees of Packard Motor Car Company, Detroit, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Samuel H. Jaffee, Trial Examiner. Said hearing was held at Detroit, Michigan, on December 18 through 22 and December 26 through 29, 1944, and on January 3 and 4, 1945. The Company and the Association appeared and participated, and were afforded full

oportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner referred to the Board for ruling a motion of the Company to dismiss the petition. For reasons stated hereinafter, the motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. In view of the importance of the question raised in the case, the Board permitted the parties and numerous other employer and union groups to appear and participate in an oral argument before the Board in Washington, D. C. on February 27, 1945, and to file briefs which have been given careful consideration.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT.

I. The business of the Company.

Packard Motor Car Company is a Michigan corporation with its principal office and place of business in Detroit, Michigan. Prior to 1941, the Company was engaged at its Detroit plants in the manufacture and sale of automobiles. Since 1941 the Company's manufacturing facilities have been converted to the manufacture of munitions for Army and Navy Ordnance and the Company is at the present time engaged almost entirely in war production. The Company annually purchases raw materials valued in excess of $5,000,000, of which 50 percent is obtained from sources outside the State of Michigan and is shipped to the Company's plants located in the State of Michigan. The Company's annual sales of finished products exceed $5,000,000, of which 90 percent represents sales of such products shipped from the Detroit, Michigan, plants of the Company to points outside the State of Michigan.

Upon the basis of these facts, we find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

Board's Exhibit No. 6

II. The organization involved.

Foreman's Association of America is an unaffiliated labor organization admitting to membership supervisory employees of the Company.

III. The question concerning representation.

In a letter dated November 25, 1944, the Association advised the Company that its Chapter 5 represented a majority of the Company's foremen and requested a conference for the purpose of initiating negotiations for a signed agreement. The Company stipulated at the hearing that it received the letter in due course of mail and that it has made no reply. The Company stated further that it never intended to recognize and bargain with the Association.

The Company moved to dismiss the petition on the ground that the foremen sought to be represented by the Association are not "employees" within the meaning of the National Labor Relations Act. In support of its motion, the Company contends that (1) foremen are "employers" within the meaning of the Act, since that term is defined in Section 2 (2) as including "any person acting in the interest of an employer directly or indirectly"; (2) the language of the Act, as well as its legislative history, indicates that Congress intended that the term "employee" refers to "workers," as distinguished from supervisors; (3) if Congress had intended to include supervisors within the definition of the term "employee," it would have used appropriate specific language as it did in the Railway Labor Act; and (4) in passing the National Labor Relations Act, Congress did not intend to remedy the kind of situation that is presented in the instant case. It is unnecessary in this decision to discuss at length the first three arguments which the Company has raised in support of its motion, for we have considered and rejected the same arguments in earlier cases involving supervisory employees.[1] In our recent decision in the **Soss** case,[2] we re-

[1] See, for example, **Matter of Union Collieries Coal Company**, 41 N. L. R. B. 961; **Matter of Godchaux Sugars, Inc.**, 44 N. L. R. B. 874; **Matter of Harmony Short Line**, 42 N. L. R. B. 757.

[2] **Matter of Soss Manufacturing Company**, 56 N. L. R. B. 348.

examined the entire question, and unanimously reaffirmed our consistent and now well settled position that supervisors are "employees" within the meaning of Section 2 (3) of the Act.[3] That decision contains a full statement of our reasons for rejecting the arguments which the Company has raised herein. However, in its brief, the Company makes one novel contention in support of its position. It argues that, inasmuch as foremen, at the time the Act was passed, were not engaging in strikes and other forms of industrial strife in order to win collective bargaining rights, Congress did not intend the Act to cover this class of employees. We are not referred to any authority for the statement that foremen were not organizing or engaging in strikes at the time the Act was passed. The fact is that the organization of foremen antedates considerably the National Labor Relations Act.[4] But even if it be assumed that the Company is correct in that statement, it is plain that it assigns too narrow a purpose to Congress in enacting this legislation. If we were to accept the Company's construction, then in every case we would be required to determine whether the employees involved were organizing and engaging in strikes at the time the statute was enacted. That static touchstone of jurisdiction would leave unprotected vast sections of employees in many vital industries, and the Act would fall far short of accomplishing its declared purpose. In stating the purpose of the statute in Section 1 and in defining the term "employee" in Section 2, Congress used broad language and there is nothing in that language or in the legislative history of

[3] In this position the Board has invariably received judicial support. See, for example, **N. L. R. B. v. Skinner and Kennedy Stationery Co.**, 113 F. (2d) 667 (C. C. A. 8); **N. L. R. B. v. Fruehauf Trailer Company**, 301 U. S. 49 rev'g 85 F. (2d) 391 (C. C. A. 6); **N. L. R. B. v. American Potash and Chemical Corp.**, 98 F. (2d) 448 (C. C. A. 9) enf'g 3 N. L. R. B. 140; **Eagle-Picher Mining and Smelting Company v. N. L. R. B.**, 119 F. (2d) 903 (C. C. A. 8); **N. L. R. B. v. Star Publishing Company**, 97 F. (2d) 465 (C. C. A. 9) enf'g 4 N. L. R. B. 498.

[4] At the time the Act was passed the practice of organizing foremen was thoroughly established in such industries as railroad and maritime and in such trades as printing, building and metal; and there were three organizations of supervisory personnel in the Postal and Railway Mail service. There is absolutely no warrant for the assumption of the dissenting opinion that the Congress intended this legislation to benefit only such employees as comprised that segment of our population characterized as "one-third of the Nation."

the Act which in our opinion would justify our construing it in the narrow and restrictive manner which the Company is urging. On the contrary, in the **Hearst** case the Supreme Court supported this Board in rejecting a restrictive construction of the scope of the Act.[5] The Court declared that, in passing the Act, Congress

> sought to find **a broad solution**, one that would bring industrial peace by substituting, **so far as its power could reach**, the rights of workers to self-organization and collective bargaining for the industrial strife which previls when these rights are not effectively established. (Emphasis supplied.)

The Court further declared that Congress employed broad language advisedly, with the intention of leaving to the expert discretion of this Board the task of determining who are "employees" within the meaning of the Act; that this question is to be determined by the "underlying economic facts," and that "where all the conditions of the relation require protection, protection ought to be given." Thus, the narrow test of jurisdiction for which the Company is contending is manifestly inconsistent with the broad purposes of the Act and for that reason we must reject it. Accordingly, we find that the persons sought to be represented by the Association are "employees" within the meaning of Section 2 (3) of the Act and we hereby deny the Company's motion for dismissal of the petition.

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the Association represents a substantial number of employees in the unit hereinafter found appropriate.[6]

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[5] N. L. R. B. v. Hearst Publications, Inc., 322 U. S. 111. In this case the court suported the judgment of the Board that the term "employee" covered newsboys.

[6] The Field Examiner reported that the Association submitted 868 dues receipts. Of these, 1 showed dues paid through July 1944; 72 showed dues paid through August 1944; 278 showed dues paid through September 1944; 75 showed dues paid through October 1944; 45 showed dues paid through November 1944; 384 showed dues paid through December 1944, and 3 showed dues paid through January 1945. Of the 868 dues receipts submitted, 739 bore the names of persons appearing on the Company's pay roll dated December 2, 1944; 84 showed dues paid by general foremen, 344 by foremen, 184 by assistant foremen, and 27 by special assignment employees. The same pay roll lists 125 general foremen, 643 foremen, 273 assistant foremen, and 65 special assignment employees.

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. The appropriate unit.

The Association requests the establishment of a unit consisting of all general foremen, foremen, assistant foremen and so-called special assignment men employed by the Company at its plants in Detroit, Michigan.[7] The Association is an organization established for the exclusive purpose of representing supervisory employees,[8] and all of the employees in the proposed unit admittedly exercise supervisory functions over subordinate employees. The question thus presented at the outset is whether or not, under the circumstances of this case, a unit consisting of supervisors is appropriate for the purposes of collective bargaining. Relying upon the authority of the **Maryland-Drydock** case[9] and related decisions of this Board, and upon certain arguments discussed below, the Company contends that such a unit is inappropriate.

While the facts in the **Maryland-Drydock** case were different from these, it is true that in several cases which followed that decision, the majority of the Board dismissed petitions for the establishment of bargaining units comprising supervisory employes in circumstances substantially similar to those presented by this record.[10] Those petitions were not dismissed, however, on the ground that

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[7] The petition covers the main plant and two other buildings in Detroit, recently acquired by the Company and referred to in the record as the Hupp and Bundy plants. The petition does not include the Company's Toledo plant, or its sales and service subsidiaries wherever located.

[8] Article VI, Section 2, of the Association's Constitution provides that: Any employee of good moral character, whose duties require the supervision of other employees, or who directs work, who may or may not supervise other employees, and who is not a member of any other organization recognized by his employer as representing him in collective bargaining, may become a member of the Association. . . .

[9] **Matter of Maryland-Drydock Company**, 49 N. L. R. B. 733.

[10] **Matter of Boeing Aircraft Company**, 51 N. L. R. B. 67; **Matter of Murray Corporation of America**, 51 N. L. R. B. 94; **Matter of General Motors Corporation**, 51 N. L. R. B. 457.

foremen are outside the ambit of the National Labor Relations Act. On the contrary, as we have pointed out in the preceding section, we have consistently said that supervisors are "employees" within the meaning of the statute, and after **Maryland-Drydock** was decided, we held in a unanimous decision that the National Labor Relations Act protects supervisors, as well as rank and file employees, in their right to self-organization and to engage in concerted activities for their mutual aid and protection.[11] In the **Maryland-Drydock** case, which was decided nearly 2 years ago, the majority merely held that, on the basis of the record then before us and in the "state of industrial administration and employee self-organization" then existing, the policies of the Act would not be effectuated by the establishment of bargaining units composed of supervisory employees. Nevertheless, we made plain at that time our unanimous view that nothing in the Act prohibits the Board as a matter of law from establishing supervisory units; rather, the majority expressly stated in that decision that the "determination of this type of question is a function reserved to the administrative discretion of the Board." Otherwise, we would have been unable to recognize, as we did in that decision, the wisdom of making exceptions to the principles enunciated in that case. Two of these exceptions have since found their way into decisions of this Board in which bargaining units were established for supervisory employees in both the printing and maritime trades.[12] The power of the Board to establish such units was challenged before the Circuit Court of Appeals for the Fifth Circuit in a case involving supervisory employees in the maritime trade. The court agreed that the determination of this question was a function reserved to the administrative discretion of the Board and supported our finding that a unit consisting of masters, mates

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11 **Matter of Soss Manufacturing Company**, 56 N. L. R. B. 348.

12 See, for example, **Matter of W. F. Hall Printing Company**, 51 N. L. R. B. 640; **Matter of Jones & Laughlin Steel Corp.**, 54 N. L. R. B. 679; **Matter of Ohio Barge Line, Inc.**, 59 N. L. R. B., No. 34; **Matter of A. S. Abell Co.**, 54 N. L. R. B. 62; **Matter of Cincinnati Daily Newspaper Publishers Association**, 55 N. L. R. B. 571; **Matter of Service Printers, Inc.**, 54 N. L. R. B. 1082.

and pilots—all supervisory employees—was appropriate for the purposes of collective bargaining.[13]

In the present case, we are again confronted with a petition seeking the establishment of a unit of supervisory employees in a mass production industry. Again we are being called upon to determine whether, in our judgment, such a unit would, on the basis of the facts presented in this case, be appropriate for the purposes of collective bargaining. Since the decision in the Maryland-Drydock case, we have observed with concern the important developments in the field of foreman organization which are fully set out in the record before us, and which, we believe, require a reconsideration of the entire problem.

At the outset it is necessary to describe the nature of the employee-group involved here, for no proper understanding of the problems of these foremen can be had unless their role in modern mass production industry is understood. As to this, there is widespread misconception. We do not have today in mass production industry, such as Packard, the kind of supervisors with which we were familiar in the early 1900's. In those days the foremen were often independent contractors, operating under the loosest kind of production schedule and having plenary authority with respect to such matters as hire, rates of pay, promotion, demotion, transfer, discipline and discharge of employees under their supervision. This was true even in those plants where the foremen were not independent contractors. In their dealing with individual subordinate employees, foremen had the power to make decisions and take action without the necessity of securing the approval of their superiors. In sum, within his own sphere, the foreman was master of his department. Today the picture is fundamentally different. Vast aggregates of capital, the presence of thousands of employees under one roof, the introduction of special purpose machinery and tools, extreme specialization and integration of departments and the development of "scientific management" in general—

13 Jones & Laughlin Steel Corp. v. N. L. R. B., decided January 18, 1945 (C. C. A. 5).

all have combined to reduce the skilled to the semi-skilled and the semi-skilled to the unskilled; and all this in turn has made the supervisor more the "traffic copy" of industry than the independent foreman of the 1900's. As the Production Engineer of the Company conceded at the hearing, the very nature of modern mass production industry requires that the supervisors be constantly subjected to rigid controls and checks from above, for it is essential that there be extremely close coordination of production among hundreds of departments (approximately 300 in this case) in order to meet increasingly exacting standards. This means that the supervisor not only must follow policy which higher management has established, but that in the very carrying out of that policy, he is required to adhere to fixed patterns and procedures also set by higher management. Thus, he is given ready-made policies to execute and he is also given standard practice to observe in executing them. Nor have these been the only changes in the foreman's status. The expansion of mass production industry has created a variety of service departments, all of which have worked fundamental changes in the authority and duties of foremen. Thus, at Packard—a typical mass production plant—the employment department does the hiring; the lay-out department lays out the machinery, tools, and equipment; the scheduling department schedules the work; the routing department routes the work; the stock or traffic department moves it; the time-study department sets the rates; the stock or traffic department moves it; the time-study department sets the rates; the inspection department checks the quality; if anything goes wrong, the master mechanic comes in and corrects it; the personnel department handles the grievances of subordinate employees beyond the first stage and retains ultimate control in any event, and other departments handle numerous other employees services.

In addition to this, the presence of strong unions of the rank and file has also operated to affect substantially the authority and prestige of supervisors. Transfers are made only after consultation with the stewards of these unions. Rates are set as a result of time studies reached after con-

ferences between the employer's time-study department and union representatives. Grievances are handled in accordance with procedures established in the contract between the employer and the rank and file union, with the stewards representing the aggrieved employee. And many of the stewards take it upon themselves (improperly) to by-pass the supervisors and go direct to a higher authority in connection with the handling of grievances. The facts pertaining to the foremen at Packard specifically are illustrative of this development.

With respect to the discipline and grievances of the rank and file workers under his supervision, the scope of the foreman's authority at Packard is established and circumscribed both by written rules and regulations laid down by the Company and by the contract between the Company and the union of the rank and file employees[14] in the negotiation of which the foremen, of course, play no part. Thus, for infractions of Company rules relating to stealing, drunkenness, gambling, fighting, sleeping during working hours, smoking in restricted areas, and the like, there are set penalties, such as a 3-day lay-off for a first offense, a 6-day lay-off for the second, and so on. If an employee is found gambling, the foreman prepares a written report (called a "query") stating the infraction and indicating the recommended penalty. This report is presented to the union steward for his signature of approval. If the steward assents, the penalty is imposed and the report is sent through channels to the Labor Relations Department. If the steward refuses to approve, the offending employee is given a hearing in which a union representative and a representative of the Labor Relations Department participate. Sometimes, the judgment of the reporting foreman is upheld, sometimes not. In some instances, as where the foreman has actually observed the violation, he is called as a witness at this hearing. On matters which are not provided for in the Company's rules and regulations, such as grievances, the grievance procedure established in the rank and file union contract is followed. Under that

[14] United Automobile, Aircraft & Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations.

contract, the union appoints a chief steward in each department or group of departments, a district steward for each of the six or more districts in the plants, and a Plant Committee consisting of not more than three employees. The contract provides that all grievances, except those concerning company policy, will be referred by the chief steward directly to the department foreman. If the grievance is not settled by the chief steward and the foreman, it is referred by the chief steward to the district steward of the union who meets with the Company representative in the Industrial Relations Department. If the grievance cannot be settled by these parties, the district steward then refers it in writing to the Plant Committee which meets and discusses the grievance with a high management representative. The vast majority of the day-to-day grievances are trivial and are worked out between the chief steward and the foreman. But questions involving company policy are never determined at the first level of the grievance procedure. The contract provides that "Grievances concerning Company policy shall be referred by the chief steward directly to the district steward who will take them up with the person in the Industrial Relations Department designated for him to contact." The foreman has no authority to make decisions or take action on such matters as the discharge, transfer, lay-off, or reclassification of the employees under his supervision. On these questions, his power is limited to the making of recommendations. The contract with the rank and file union provides that "The chief steward will be notified in writing before an employee is discharged, reclassified or transferred from his department. The chief steward will have twenty-four (24) hours in which to file a protest and the employee will receive a hearing within the same length of time, if requested." The participants in such a hearing are a representative of the union and a representative from the Company's Labor Relations Department.

This is not to say that the foreman's job is becoming less exacting or that it can be filled by less competent people. On the contrary, ". . . the need for able men in the posts of foremen seems to be growing. The foreman may

be given more and more ready-made policies to execute, more and more standard practices to observe in executing them, and more and more help from a variety of service departments, but he is also held to higher and higher standards in meeting production schedules, in maintaining standards of quality, and in dealing with personnel. Furthermore, higher management cannot escape dependence upon the foreman's knowledge of men and conditions and upon the wisdom and fairness of the foreman's judgment."[15] But the over-all, long-term trend in mass production industry has materially reduced the independence and authority of the foreman and his responsibility for making policies. As the Foremen's Panel of the National War Labor Board has aptly described the situation, "Whereas he was formerly an executive with considerable freedom of action, he is now an executor carrying out orders, plans and policies determined above"; he is "more managed than managing, more and more an executor of other men's decisions and less and less a maker of decisions himself."[16]

With this picture of the foreman in modern mass industry in mind, his asserted need for collective bargaining becomes more meaningful and the incredibly rapid growth of his organizations wholly understandable.

The facts which are presented to us reveal an unswerving determination on the part of foremen to combine together in their own organizations for the purpose of obtaining the legitimate fruits of collective action. Spurred by the realization that developments in mass production techniques have materially reduced their authority and independence and by feelings of insecurity and resentment arising out of the inevitable comparison with employees who are inferior in rank but superior in bargaining strength by virtue of the labor organizations behind them

[15] Report and Findings of the Special Panel of the National War Labor Board appointed in certain disputes involving foremen. Among the numerous employers involved in these disputes was the Company in the instant proceeding. The Panel, hereinafter called the Foremen's Panel, issued its Report and Findings on January 31, 1945.

[16] Report and Findings of the Foremen's Panel, ibid., at pages 39 and 41.

and the protection of the Act, this group of employees has started a movement toward self-organization which continues to gain in strength and momentum, with remarkable spontaneity, despite an almost universal unwillingness on the part of employers to accept such organizations and deal with them. In the fall of 1941, a group of foremen at the River Rouge plants of the Ford Motor Company began to discuss the possibility of forming a foreman's organization and in January, 1942, the first chapter of the Foreman's Association of America was established at the Ford plants. By the end of 1942, there were 7 chapters containing a total of 10,392 members. At the end of 1943, there were 67 chapters; and by the end of 1944, there were 148 chapters, with a total of 32,142 members. At first the organization was largely confined to the automotive industry in the Detroit area, but it has now expanded to embrace a host of major industries in 17 States and Canada.[17] It is significant that during this period the Association found it unnecessary to employ paid organizers. However, notwithstanding this growing strength and the fact that we have made it clear that nothing in our decisions should be taken to prohibit employers from voluntarily dealing with foremen's organizations, it cannot be denied that most employers have nevertheless refused to accord them recognition and have been strengthened in this position by the belief that this Board would not require them to do so.[18]

The result has been that supervisory employees have resorted to the only remaining weapon at their disposal to secure recognition—a test of economic strength through strikes and threats of strikes. Thus, after the decision in the **Maryland-Drydock** case and from July 1, 1943, through November 1944, there were 20 strikes of supervisory em-

[17] The industries in which the Association is now organized or organizing include the following: automotive, plumbing, heating and refrigeration instruments, rubber, radio, public utilities, steel fabrication, shipbuilding, machine parts, aluminum, petroleum products, stoves, bedding, chemical products, electrical appliances, grinding parts, smelting, paper products, railway cars, aviation, elevators, medical supplies, and meat products.

[18] Thus far the Association has been able to secure only two contracts, one with the Ford Motor Company and the other with the United Stove Company, of Ypsilanti, Michigan.

loyees; 131,000 employees were involved and 669,156 man-days of work were lost as a result. Over 96 percent of the man-days lost occurred in strikes for recognition.[19] The basic industries of the nation were affected: shipbuilding, steel, aluminum, brass, automobile, coal mining, airplane products, railroad cars, and public utilities. The effect of these strikes for recognition on the production of vital war material has been serious. General Arnold, Commanding General of the Army Air Forces, testifying before the National War Labor Board in May 1944, declared: "These strikes in Detroit cover Packard, where we are producing the Merlin Engines; they are affecting Briggs, where A-20, B-29, B-17 and B-24 parts are being produced; they are affecting Murray, where we are producing P-47 wings and B-17 parts; they are affecting Hudson, where we are producing B-29 parts and P-38 parts; they are affecting Gar Wood, where we are producing cranes for heavy trucks, parts for our amphibious ducks, winches and parts for wrecking trucks used in the battle field and other places. . . . In my opinion this is one of the most serious set backs that the Army Air Force program has had since its inception. And to show you that I am not exaggerating, this strike so far has cost the United States Army Air Force 250 P-51 airplanes, which is not a small number."[20] The strike which closed the Packard plant in 1944 was also, as admitted by the Company, a strike for recognition.

We cannot shut our eyes to these developments since the decision in the **Maryland-Drydock** case. The Act which it is our responsibility to administer was enacted by the Congress for the purpose of remedying this very kind of evil. The Congress found in Section 1 of the Act that the refusal by employers to recognize and deal with their employees in collective bargaining leads to strikes and other forms of industrial strife, to the detriment of the public interest in the uninterrupted production and flow of material in inter-

19 Statistics prepared by the Bureau of Labor Statistics, Department of Labor, and certified by the Secretary of Labor; introduced in evidence at the hearing in the present proceeding.

20 Public hearing before the National War Labor Board in the case of the Foreman's Association of America, May 17, 1944, at the Department of Labor building in Washington, D. C.

state commerce. It therefore enacted the statute to ensure that employers should recognize the right of employees to organize and bargain collectively, and that employees should be able to gain such recogniton without resort to economic warfare. The experience of the past 9 years under the Act has vindicated the judgment of the Congress. During that period 10,058,872 employees have resorted to the orderly procedures of the Act in 32,615 separate representation cases in order to establish their right to recognition. These employees represent every major industry in the Nation and are employed in the 48 States and in the Territories. The vast majority of these cases have been and are now being settled through informal procedures.[21] And while representation cases have increased each year, unfair labor practice cases have declined, indicating again that the Act has fulfilled its purpose of making it unnecessary for employees to resort to strikes in order to gain recogniton, as well as the extent to which the purposes of the Act have been accepted in the industrial practices of employers.[22]

Now, the history of rank and file organization is being duplicated in the organizational efforts of supervisory employees. Just as rank and file employees before the passage of the Act were forced to resort to tests of economic strength in order to gain recognition, so it is today with supervisory employees. These are the plain and inescapable economic facts, and we think it therefore manifest that the time has come when, in the interest of effectuating the policies of the Act, we must accord greater recognition to the militantly expressed need of supervisory employees for collective bargaining through their own organizations.

The Company argues, however, that a unit of supervisory employees would not effectuate the policies of the Act and

[21] In the first 9 years of the Board's operations, 70.2 percent of all representation cases were closed in the informal stages. 9th Annual Report, p. 11.

[22] In 1936, 81 percent of our cases involved unfair labor practices, such as refusal to recognize; 19 percent were representation cases. In 1944, only 28 percent of our cases arose out of unfair labor practices, while 72 percent were representation cases. 9th Annual Report, p. 16.

therefore would be inappropriate; it urges us to continue to adhere to the principles enunciated in the majority decision in the **Maryland-Drydock** case. The Company's contention appears to be predicated on two theses: (1) the union here seeking to represent the foremen is not, the Company asserts, independent of the union of rank and file employees at Packard; and (2) regardless of their representative's independence of the rank and file union, foremen cannot constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. Since, in the **Maryland-Drydock** case, all members of the Board considered relevant the question of the independence of the foremen's organization, we shall turn first to a consideration of that issue.

The Company's position seems to be that the Association is not now independent of rank and file unions; and if it is now independent, it cannot long remain so. It may be assumed that the Company is concerned solely with the relationship between the CIO and the Association, since it refers to no other labor organization. In support of its argument that the Association is not now independent of the CIO, the Company points out that (1) on June 29, 1943, the Michigan CIO Council passed and published a resolution expressing its moral support for the "fight of the Foremen to establish collective bargaining rights and other rights guaranteed by the Wagner Act"; (2) on May 24, 1944, an article appeared in "Victory News," an official publication of the UAW-CIO at the Dodge Chicago plant of the Chrysler Corporation, in which a CIO local expressed its moral support for the efforts of the Association in organizing and seeking to gain collective bargaining rights at that plant; (3) in a strike involving the Association at the plants of the Republic Steel Corporation, about 1,000 CIO steelworkers refused to cross the picket line; and (4) in the foremen's strike at Briggs in 1944, the rank and file created such a pandemonium inside the plant that the operations had to cease.[23] On the basis of these incidents, the

[23] The Company also read into the record several paragraphs of material which it alleges appeared in a leaflet prepared and distributed by the CIC at the plants of the Murray Corporation of America during the

Board's Exhibit No. 6

Company concludes that the Association is not independent of the CIO. We cannot agree. In an absolute sense, of course, the Association is not independent of the CIO, or any labor organization. Both are labor organizations and both are organized for basically similar purposes—the improvement of the wages, hours and working conditions of their membership through collective bargaining. Both have common problems and therefore a common "bond of sympathy." For these reasons, it is to be expected that they will express moral sympathy for the organizational efforts of one another and will, on occasion, even refuse to cross the picket line established by the other during a strike. But support of this nature does not prove the absence of independence. It shows only the existence of a general common purpose—a condition which inheres in the very nature of the labor movement and which therefore cannot be of controlling significance in our determination of whether or not a proposed unit is appropriate for the purposes of collective bargaining. The essence of independence of which this Board may take cognizance is freedom of action, freedom from control. The Company does not allege that the Association is not a free agent, or that its policies and decisions are controlled by the CIO. Indeed, the Company impliedly admits in its brief that the

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organizational efforts of the Association. However, the material read into the record is not self-identifying and the Company failed to have it identified or even to introduce it into evidence. We are thus unable to give it any probative value. It might be noted, however, that the material in question contains statements of sympathy and support by an unnamed and unidentified union for the Association, similar to the statements discussed in the text of the decision, supra. The Trial Examiner rejected certain exhibits offered in evidence by the Company to prove that rank and file employees in a certain plant in Detroit participated in the foremen's strike of May 1944. The exhibits were photostatic copies of findings of a Claims Examiner of the Michigan Unemployment Compensation Commission in which he found that certain rank and file employees were disqualified for unemployment compensation because they had participated in the foremen's strike, within the meaning of Section 29 (c) of the Michigan Unemployment Compensation Act. We affirm the ruling of the Trial Examiner, for it is clear that the proffered exhibits do not constitute competent evidence. If the Company desired to prove that the rank and file employees in Detroit participated in the foremen's strike, the competent way to have done so was by the introduction of direct evidence on that point before this Board.

The Trial Examiner freely admitted abundant evidence offered to show a connection between the CIO and the Association, rejecting only the foregoing findings by a Michigan Claims Examiner.

Association is not controlled by the CIO. There is not a scintilla of evidence in the record to suggest that the CIO or any other labor organization has any voice in the policies or control over the actions of the Association. The Company contends further, however, that even if the Association is now independent, it cannot long remain so because its exists principally in an area where the UAW-CIO is the dominant and most powerful labor group. The Company points to the fact that several labor organizations which were organized as independent groups in Detroit have since been absorbed by the UAW-CIO. A similar fate is inevitable for the Association, the Company contends. Of course, this is a matter of speculation. The Company's prediction may or may not prove to be accurate. It is sufficient to say that on the basis of the facts now before us it is clear that the Association is an unaffiliated and independent labor organization, organized for the exclusive purpose of representing supervisory employees.[24] Thus, we are not confronted, as we were in **Maryland-Drydock**, with the petition of a foremen's association which is also the representative of the rank and file workers.

However, the Company appears to take the position that a unit of its supervisory employees would be inappropriate even though the foreman's union were independent and unaffiliated. We do not agree. It is true that, following the **Maryland-Drydock decision**, a majority of the Board also dismissed the petitions of unaffiliated and independent foreman's unions.[25] But the majority did not do so because it felt that the dangers which it envisaged in the

[24] It is interesting to note that the same arguments were made by the Company before the Foremen's Panel which concluded that: "Whether the United Automobile Workers (UAW-CIO) will be able to take over the Foreman's Association, or to dominate it without taking it over, is a matter of conjecture. The result of any such attempt would necessarily depend partly upon whether the foremen wished to remain independent. . . ." (Report of Foremen's Panel, ibid., at page, 29.) Officials of the Association stated at the hearing in the instant case that they did not desire or intend to affiliate with any other labor organization and that there was, in their opinion, no need for such affiliation. The Constitution of the Association provides that it shall not affiliate with any labor organization, and in its contract with Ford, the company has the right to terminae the agreement in the event of such affiliation.

[25] Boeing Aircraft Company, Murray Corporation of America, and General Motors Corporation, supra.

Maryland-Drydock situation were actually present in those cases. Indeed, as we pointed out in our unanimous decision in the **Soss** case, those potential dangers which concerned the majority of the Board in **Maryland-Drydock** do not materialize in cases where the petitioning foremen's union is independent and remains so. Thus, for example, it could not be seriously contended that the Company had illegally dominated or assisted the union of its rank and file employees by recognizing the Association as the representative of its supervisors, or that the organizational freedom of the rank and file employees had been impaired by virtue of the activities of the foremen in behalf of their own independent organization. The Company itself has not claimed that any such dilemma is present in the instant case. The sole reason which impelled the majority of the Board to dismiss the petitions of unaffiliated foreman's unions was that it felt it would be necessary to police our certification to guard against possible future affiliation. Such a procedure, it believed, would prove impracticable. However, since the decisions in those cases, we have been called upon in several instances to make inquiries and take certain action as a result of a change in circumstances following certification.[28] Experience in these instances has demonstrated that post-certification procedures are not impracticable, for they do not require us to "police" the certifications in the usual sense of that word. The self-interest of the parties operates to call to our attention material changes in circumstances without the necessity of our constant surveillance. Thus, if the present proceeding should result in the certification of the Association and if, following that, there should occur material changes in circumstances which result in difficulties that prove insoluble, we can, in a post-certification proceeding, apply an appropriate remedy. All this, of course, is a matter of speculation, and the field of labor relations being as fluid and complex as it is, no blueprint for the future can now be drawn. If difficulties do arise in a fu-

[28] Matter of Cramp Shipbuilding Company, 52 N. L. R. B. 309; Matter of Larus & Brother Company, 54 N. L. R. B. 1345; Matter of Western Cartridge Company, 55 N. L. R. B. 1171; Matter of Shell Petroleum Corporation, 52 N. L. R. B. 313.

ture case, we will, as we must, resolve them upon the facts as they appear in the record of that case.[27]

The Company argues, nevertheless, that apart from the alleged connection between the Association and the CIO and the possibility that the Association may become affiliated, the establishment of a bargaining unit of supervisors would undermine the accepted techniques of production and management which have made American industry what it is today. Foremen are a "part of management," the Company contends, and owe a duty of undivided allegiance to their employers; this allegiance would be divided, or even lost, if the Company were obliged to bargain collectively with them through their Association.

First, it must be remembered that foremen have the right to form, and join labor organizations quite apart from and outside the Act. This is a fundamental right, the right of free association, which was not created, but implemented, by the Act. The statute we administer was enacted to insure that this already existing right could be exercised in a peaceful and orderly manner so that the flow of goods and services in interstate commerce would not be interrupted. Thus, to deny the foremen in this case the protection of the Act is not to deny them the right to form and join their union or to demand collective bargaining rights from their employer. It would only be a denial of access to peaceful procedures to exercise that right.

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27 While the question is not before us here, in an appropriate case, in which the record discloses the proper autonomy with respect to groups of supervisory employees, Chairman Millis, in accord with his position expressed in his dissent in the **Maryland-Drydock** case, would find no obstacle to recognition in the affiliation of such groups with non-supervisory employee organizations.

From an experience in labor relations covering approximately 30 years, it is also Chairman Millis' considered judgment that the problems which inevitably arise from the recognition of any class of employee, including supervisory employees, will find their best and most prompt solution in a system of collective bargaining where both labor and management display sincerity and cooperation in day-to-day relationships and proceed to analyze and resolve their differences instead of holding fast to and debating unestablished assumptions.

In view of the developments since the decision in **Maryland-Drydock**, which have been discussed above, Member Houston regards the question of representation of supervisory employees by unions affiliated with organizations admitting to membership employees other than supervisors as entirely open and one which ought to be fully reconsidered when the issue is raised in an appropriate proceeding.

But more importantly, we cannot assume, as the Company does, that self-organization for collective bargaining would prove incompatible with the foreman's faithful performance of his duties. Such an assumption is not only repugnant to the basic democratic philosophy upon which this Act is founded, but it has never proved valid in our experience under the Act. In the early days, the same fears were expressed by employers with respect to the fidelity of rank and file employees, but experience has proved them groundless. And more recently employers, including the present Company, predicted that the organization of plant guards would divide the allegiance of these employees and undermine plant discipline and security.[28] But the Company conceded at the hearing that its plant guards who have been organized for several years have not performed their tasks any less faithfully or efficiently because of their organization in a collective bargaining unit. We perceive no reason for assuming that recognition of the bargaining rights of foremen will have a different result. The foremen in the present case have been organized, though not recognized, for 2½ years and admittedly have not become inefficient or disloyal in the performance of their duties. If organization without recognition—an unstable situation at best—has not had this untoward result, we believe there is even less reason to expect such a result when the employer accords full recognition to the bargaining rights of his foremen. In any event, there is nothing in the statute which as designed or administered protects disloyal or inefficient employees and the Company may always resort to its normal disciplinary powers to insure faithful and efficient job performance by its employees of all ranks. Moreover, it is to be noted that this kind of loyalty is really not involved in the question raised by the present petition. The foremen here are seeking to establish their right to bargain collectively with their employer regarding matters relating to their wages, hours and conditions of work. With respect to these matters, the foreman owes no duty of loyalty to his employer, for in this aspect of his employment rela-

[28] See, for example, **Matter of Packard Motor Car Company**, 47 N. L. R. B. 932; **Matter of Chrysler Corporation**, 44 N. L. R. B. 881.

tionship, he deals with management at arms length and must rely ultimately upon his own bargaining power to gain concessions just as any rank and file employee. One of the foremen witnesses at the hearing, while admitting that in the performance of his job he owed a duty of loyalty to his employer, stated that with respect to such matters as his own wages, hours and conditions of work his primary duty was to himself and his family. With this summation we agree, and we fail to see why a foreman is likely to perform his duties less efficiently or with less fidelity merely because he is bargaining collectively with his employer on matters relating to his wages, hours and conditions of work. Certainly, we cannot now conclude that this is true solely on the basis of the Company's prediction. In such matters, we must rely upon experience as our guide.

The Company argues further that the foremen do not need collective bargaining, since it has been found by the Foremen's Panel that their grievances are not substantial. Even if it be assumed, arguendo, that the foremen have no just cause to complain about their wages, hours or conditions of work, and that the Company has been fair to them in these matters, nevertheless there remains a grievance which, as we have pointed out above, is more basic, namely, the denial by their employer of their right to participate in the decisions which affect their welfare as employees. The fact that foremen have struck for recognition even though, as the Company asserts, they have no other just grievances, demonstrates the fundamental character of this grievance and its tendency to engender industrial strife. This fact was recognized by the Foremen's Panel, and it is this basic grievance of all employees which the Act was designed to remedy, for Congress found that the denial by employers of this democratic right of participation results in strikes. Thus, the jurisdiction of this Board does not depend upon such matters as the fairness of wage rates. The test of our jurisdiction is to be found in the purposes of the legislation. Congress sought, in the Act, to reach as far as its powers could go to eliminate strikes and other industrial strife arising out of the denial by employers of the collective bargaining rights of their

employees. We believe that Congress intended to, and did in fact, reach far enough to remedy the situation in the present case.

We do not say that the recognition of the collective bargaining rights of the foremen is a panacea for all the problems arising out of their peculiar intermediate position in industry. But we believe that it is the first essential step toward a solution. The alternative which the Company proposes—the denial of basic bargaining rights—is a policy of negation which contributes nothing to a constructive solution. We have examined the issues in this case with extreme care not only because of the vital importance of the question to the Nation, but also because we fully appreciate the desirability of achieving a measure of certainty as to the administrative rulings of this Board. We feel, however, that we would be remiss in our duty as public officials if we permitted our reluctance to alter the existing rule to blind us to the effects of the powerful economic forces which have manifested themselves since that rule was laid down. The movement for the organization of foremen is no longer a future possibility, it is an existing fact; and the importance of their organizational development can hardly be exaggerated, for supervisory employees constitute a large and strategic segment of the working force in mass industry. The Nation has now experienced the drastic consequences of extra-statutory organization by supervisory employees, and the duty of this Board has become plain. To continue to deny to such employees as a class the bargaining rights guaranteed by the Act would be to ignore the clear economic facts and invite further industrial strife—a state of affairs which the Nation can ill afford at this time and which the Act was designed to mitigate.[29] We are now convinced that the

[29] We are not unmindful of the fact that, as the Company points out, the Act has not eliminated all strikes. Employees still strike for better wages, hours, and working conditions, and for the redress of grievances, real or fancied. The operation of the Act, while it undoubtedly mitigates, cannot prevent all such strikes, for collective bargaining itself is not infallible. However, the Act does afford a direct and primary remedy for a major cause of strikes—the denial of recognition. As we pointed out above, the statistics show that since the Act was passed vast numbers of rank and file employees have found it unnecessary to strike in order to gain recognition, for they have been able to secure that right by resorting to the peaceful and orderly procedures of the Board. We believe it reasonable to predict that the same results will flow from the recognition of those rights for supervisory employees.

national interest will be better protected if the organizational activities of foremen are conducted within, rather than without, the framework of the collective bargaining statute.[30]

We turn now to a consideration of the sole remaining question: the appropriate grouping of the employees affected by the petition. At the hearing the Company took no position with respect to the proposed unit except to contend that no unit of supervisory employees would be appropriate. However, at the oral argument before the Board, the Company stated that, if the Board were to find that supervisors could constitute appropriate units, then its position was that it objected to the inclusion in a single unit of four classes of foremen.

The Company conducts its principal manufacturing operations in 115 buildings located on an 84-acre tract in the city of Detroit. In addition, it has recently acquired two additional buildings in Detroit—the Bundy Tubing Plant and the old Hupp Plant—to which it is presently extending its operations. The four classes of supervisors in all of these buildings are covered by the petition. The present manufacturing operations are carried on in two principal divisions, the Aircraft Division and the Car and Marine Engine Division. (The use of the word "Car" is historical only.) For the purposes of differentiation the two main divisions are referred to as "Plants" and the subdivisions of the two main divisions as "divisions." These two principal Plants are broken down into approximately 20 divisions and these divisions in turn are broken down into approximately 300 departments. Substantially all of the employees in the proposed unit work in the manufacturing plants.

The managerial and supervisory hierarchy of the Company is set out in the following chart. The number after each job title indicates the number of persons employed in that category as of December 2, 1944.

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30 We hereby overrule our decisions in Boeing Aircraft Company, Murray Corporation of America, and General Motors Corporation, supra, and to the extent that it is inconsistent with the present decision, Maryland Drydock Company.

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Title	Number
President	1
Executive Vice President	1
Vice President of Engineering	1
Manager of Aircraft Engine Plant	1
Assistant Manager of Aircraft Engine Plant	1
Night Superintendent Aircraft Engine Plant	1
Asst. Superintendent Aircraft Engine Plant	1
Manager of Car and Marine Engine Plant	1
Executive Assistant Car and Marine Engine Plant	1
Managers of Divisions (Includes Master Mechanic—Plant Engineer—Chief Inspector)	16
Assistant Managers of Divisions (Includes Assistant Master Mechanic—Assistant Plant Engineer—Assistant Inspectors)	32
Superintendents of Divisions (Some Superintendents as shown by the Charts have the same jurisdiction as Managers or Assistant Managers)	20
General Foremen	125
Foremen	643
Assistant Foremen	273
Special Assignment Men	65

As of November 30, 1944, the total number of employees at the plants involved in this proceeding was 32,533.

The general foremen at Packard are in charge of one or more departments, the record indicating that the maximum number under any one general foreman is four departments. The status of foremen and assistant foremen varies. In some departments there are no foremen; in others there are no assistant foremen. Where there are no foremen, the duties of the assistant foremen correspond to those of foremen in other departments, and where there is no assistant foreman, the foreman does the work corresponding to the job of an assistant foreman in another department. In general, foremen and assistant foremen have charge of a segment of the work of an entire department; they may, for example, be in charge of a subassembly line, or some

other branch of work of the entire department. In other instances, they appear to be the direct assistants to the general foremen in connection with the work of the whole department. In some cases, their work is a combination of both. And where a general foreman is in charge of more than one department, it is common for the foreman to be the direct head of one of the departments. The special assignment men have the qualifications of general foremen and foremen and are sometimes used in that capacity if general foremen or foremen are absent. Principally their duties, which will be discussed below, are described as "trouble-shooting."

General foremen receive a base monthly pay of $304.50; this, with overtime pay, adds up to approximately $500 a month. Foremen are paid a base rate of $278 per month; with overtime, this amounts to $450 or $460. Assistant foremen who are paid by the month, receive a base rate of $242; a total of $410 or $420, with overtime. Some assistant foremen are paid by the hour; in this case, their total pay amounts to about the same as the other assistant foremen. The special assignment men are paid about the same as general foremen or foremen, depending upon their qualifications. These figures are approximate averages. There are some who receive less, while others who are connected with work calling for a higher degree of skill receive more.

In general, the status and duties of all classes of foremen at Packard is the same as that of foremen in other mass production industry which we have described earlier. At Packard, each foreman is responsible for the quality and quantity of production of the workers under his supervision. None of the four classes of foremen performs any manual work. The general foreman checks the hourly production report to see that the production in his department has been maintained. If a breakdown occurs, he must take action to see that it is remedied by the appropriate departments. It is his duty to instruct the foremen and assistant foremen under him and see that they are properly executing their duties. He is sponsible for the safety and cleanliness of his department or departments. He makes out

numerous reports and signs various types of employee passes. In all these matters he is under the supervision of and is responsible to his superintendent. The foremen and assistant foremen, on their level, have similar responsibilities and duties with respect to the men and women over whom they exercise supervision. The assistant foreman is under the supervision of the foreman, or in those departments where there are no foremen, the general foreman. The foreman is directly responsible to the general foreman. This chain of responsibility proceeds vertically up through the various supervisory and managerial levels set forth in the chart, supra. The special assignment men, in addition to serving as substitutes for absent general foremen and foremen, act as "trouble-shooters." Thus, for example, if a department runs into difficulty regarding the production of a certain part, the special assignment man is called upon to investigate. If the trouble involves a part that passes through three or four departments in the process of manufacture, he may be required to trace it back through all the operations. Or if a particular job is not running according to plan, he is called upon to observe and supervise until the deficiency has been corrected. When the special assignment man is called in to solve a production problem, he exercises the supervisory authority of a general foreman or foreman, whichever is required.

A Foreman's School has been in operation at Packard for a number of years. The school is conducted on a conference basis, the subjects being generally planned by the Industrial Relations Manager and the Manager of the School. All grades of foremen attend this school, with no distinction whatever between them. The subjects discussed cover a wide range and include such matters as discussion of the contract with the rank and file union, safety and accident prevention, waste, management in business, speech habits, morale, plant efficiency, labor relations, etc.

All classes of foremen have certain privileges and advantages not enjoyed by the rank and file worker. Thus, while a rank and file employee receives no pay when absent, a foreman is paid for justifiable absences according to a

schedule based upon length of service. The vacation with pay policy is more generous for foremen than for rank and file, and foremen, unlike their subordinates, receive separation pay in the event their service with the Company is severed. Salaried foremen are paid for holidays since their salary is on a monthly basis, and they are permitted to report one half hour late for work without being docked in pay; neither of these privileges is enjoyed by the rank and file.

The general foreman has supervision over the foremen and assistant foremen and he may and often does make recommendations to his superintendent regarding their rates of pay, transfer, rehire, lay-off, discharge and discipline. However, in no event may he take any action in these matters without the prior approval of his superiors. The same is true with regard to physical changes in the departments. All classes of foremen are expected to and do make suggestions for the improvement of production in their department, but in no case are they permitted to put these suggestions into operation without the approval of higher management. Thus, if a certain production method is not working out well in practice, the foreman would report it, sometimes with recommendations for improvement, to the superintendent or the division manager who in turn would take the matter up with the planning or layout departments. The relationship between the foremen and the rank and file employees over whom they exercise supervision has been described at an earlier point in this decision.

On the basis of these facts, we believe that collective bargaining can best be conducted on the basis of a single unit. All four classes of employees are supervisors who perform no manual work, and while they usually function on different levels, their duties and responsibilities are substantially alike. Moreover, it is common for a foreman—like most general foremen—to be in charge of an entire department, and in cases where there are no foremen in a department, an assistant foreman will often serve in a position which corresponds to a foreman's job in another depart-

ment. In many respects, the Company itself treats these employees as a single group. Thus, substantially, all are paid a salary upon the basis of a 40-hour week, with time and one-half for overtime; all four classes attend the Company's Foreman's School, with no distinction whatever between them; all four classes enjoy certain common privileges and advantages such as justifiable absences with pay, vacation with pay, separation pay, the privilege of reporting one half hour late for work without being docked in pay, and all four wear ordinary street clothes at the plant. It is significant that, in their organizational efforts at the Company's plants and at plants of other employers, these classes of supervisors have acted as a unit. They consider themselves a middle group between the rank and file on the one hand and management on the other, and the facts of modern mass production industry which we have discussed earlier support this view. Their problems are fundamentally the same and it is therefore no accident that they have banded together in the same organization.

The Company believes, however, that notwithstanding this strong community of economic interest, it would be improper to group the four classes of foremen together in one unit since they exercise a degree of supervision over one another. We do not believe that this fact alone is of sufficient importance to outweigh the factors which favor the establishment of a single unit. Moreover, with respect to such important matters as selection, transfer, promotion, demotion, reclassification, discipline, and discharge, the facts show that the authority of the supervising foreman over the subordinate foreman is limited to the making of recommendations to higher management; he has no power to make decisions or take action on these matters without the prior approval of a higher authority. In addition, there are compelling practical reasons militating against the creation of four separate units. It would necessitate the negotiation of four separate contracts, probably with four separate negotiating committees; it might require the establishment of four separately chartered locals, each holding independent meetings and functioning through four separate sets of committees with great dupli-

cation of effort both by the union and the Company. Problems involving the allocation of supervisors to their proper unit and other related questions would be likely to arise. Moreover, although such units would be theoretically discrete, all four classes of foremen would be members of the same union. Such an unwieldy arrangement, we believe, would create more problems than it would solve. It is noteworthy that the Association's contract with the Ford Motor Company embraces in a single unit six classes of supervisory employees covering an apparently broader portion of the supervisory hierarchy than the proposed unit in the present case, and this arrangement does not appear to have created insoluble problems. If for certain purposes, such as the handling of grievances, it becomes necessary to establish different procedures for the different levels of supervision, this can be handled in the collective bargaining agreement. We believe that, upon the basis of the facts in the present case, a single unit is the most appropriate for the purposes of collective bargaining. This finding does not preclude a future reconsideration of the unit question, if the single unit arrangement does not prove feasible in practice.[31]

Accordingly, we find that all general foremen, foremen, assistant foremen, and special assignment men employed by the Company at its plants in Detroit, Michigan, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. The determination of representatives.

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who

[31] In several previous decisions, the Board has found that it would be inappropriate to group several levels of supervisors in a single bargaining unit. See, for example, **Matter of Murray Corporation of America**, 47 N. L. R. B. 1003, and **Matter of Boeing Aircraft Company**, 45 N. L. R. B. 630. Upon reconsideration and for the reasons stated above we now believe that a single bargaining unit is more feasible, and therefore appropriate, for the purposes of collective bargaining, in a case like the present one where there is such an obvious community of interest, and no marked disparity in rank, among several levels of foremen.

were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION.

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

Directed that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Packard Motor Car Company, Detroit, Michigan, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) days from the date of this Direction, under the direction and supervision of the Regional Director for the Seventh Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during the said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by Foreman's Association of America, for the purposes of collective bargaining.

Signed at Washington, D. C., this 26th day of March, 1945.

HARRY A. MILLIS,
Chairman,

JOHN M. HOUSTON,
Member,

(Seal) National Labor Relations Board.

Gerard D. Reilly, dissenting:

In my opinion, the decision we are making today does irreparable damage to the delicate balance between the conflicting interests of management and workers which the National Labor Relations Act sought to bring about in American industry. From the very beginning of the administration of this Act, the Board has recognized that in the mass production industries the interests of foremen lay predominantly with management groups. Consequently, in its decisions dealing with unfair labor practices, the Board deemed the actions of a foreman the actions of his employer.[1]

Less than two years ago, a majority of the Board, recognizing that this historic principle was rapidly being fatally compromised by the effects of its then recent **Union Collieries** decision,[2] decided in the **Maryland Drydock** case[3]

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[1] In the interest of protecting freedom of choice among the workers it has been the almost invariable practice of the Board not only to exclude foremen from collective bargaining units in those industries, but also to disestablish labor unions which were formed by supervisory and subordinate employees on the ground that such organizations were, ipso facto, company dominated. **N. L. R. B. v. The Niles Fire Brick Company**, 124 F. (2d) 366 (C. C. A. 6); **H. J. Heinz Company v. N. L. R. B.**, 311 U. S. 514, 518; **N. L. R. B. v. Engineering & Research Corporation**, 145 F. (2d) 271 (C. C. A. 4), Cert. denied January 29, 1945.

[2] **Matter of Union Collieries Coal Company, Oakmont, Pennsylvania, and Mine Officials' Union of America (Ind.)**, 41 N. L. R. B. 961, 44 N. L. R. B. 165. The reasoning of the majority and its conclusion in the instant case, in the light of this Board's experience during a period of less than 8 months in which the Board's policy as stated in the **Union Collieries** case was applied, invite for its appraisal a variety of incongruous situations. Indeed, since the decision does not limit the application of the policy announced therein to cases where the union involved is unaffiliated and independent of other organizations which represent rank and file employees, these situations comprise a veritable Pandora's box of incongruities. See **Matter of Godchaux Sugars, Inc.**, 44 N. L. R. B. 874; **Matter of Stanley Company of America**, 45 N. L. R. B. 625, where the Board was presented with the problem of a unit of supervisory employees at a time when the ordinary employees had not yet organized for collective bargaining. As I noted in my dissent in that case, there can be little doubt in such a situation as to the form that organization of ordinary employees will take if the Board permits their supervisors to choose bargaining agents under the Act. **Matter of Boeing Aircraft Company**, 45 N. L. R. B. 630; **Matter Southwestern Bell Telephone Company**, 45 N. L. R. B. 1078.

[3] **Matter of The Maryland Drydock Company and Local No. 31 of the Industrial Union of Marine and Shipbuilding Workers of America**, 45 N. L. R. B. 733.

that employers were not required to bargain collectively with labor organizations composed in whole or in part of supervisors. The doctrine of this case has become one of the guiding principles in industrial relations policy in our national wartime economy. Although challenged on the date of its issuance in a dissenting opinion by Chairman Millis as "administrative legislation," there has been no effort made by any member in Congress to overrule it by legislative amendment.[4] It has been widely accepted as a rule of decision by State courts, State boards and federal arbitrators dealing with cognate problems.[5] Yet, for all practical purposes, and at a time when any fundamental change in well established rules cannot but have an unsettling effect upon essential war production, this decision is now being overruled.

While I would be the first to agree with my colleagues that we should not shut our eyes to recent developments and believe emphatically that, to the extent that we have discretion under the statute, any decision of this Board should be overruled if its impact has a disastrous effect upon sound industrial relations, I find wholly unconvincing the arguments now advanced for the view that the Maryland Drydock rule has proved unworkable in practice.

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[4] There is some attempt in the majority opinion to claim that the result reached conforms to the intent of Congress. In view of the fact that supervisors were never mentioned either in committee or on the floor at the time of the passage of the Wagner Act, I have never regarded such arguments as particularly fruitful, especially as the definition of "employee," unlike that contained in the Railway Labor Act, does not specifically include "subordinate officials." The real truth of the matter seems to be that Congress scarcely adverted to the question until the repercussions of the **Union Collieries** decision invited the attention of the House. Then a bill to amend the Act so as to exclude supervisors from its provisions, gathered considerable legislative momentum in the House Military Affairs Committee. Before the bill was reported out, however, the **Maryland Drydock** decision was issued.

[5] **Hathaway Bakeries, Inc., v. Massachusetts Labor Relations Comm.**, Mass. Sup. Jud. Ct., 55 N. E. (2d) 254; **Division 1327 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America v. Pennsylvania Labor Relations Board** (Pittsburgh Railways Company Employees' case), Pa. Ct. of Common Pleas, Allegheny County, No. 2053, July 27, 1944. See Opinion of the General Counsel, National War Labor Board, relative to the status of foremen before the War Labor Board, 14 L. R. R. 415 (May 1944). New York is an exception. See **Allegheny Ludlum Steel Corporation v. Kelly**, N. Y. Sup. Ct. Chautauqua County, No. 185, July 27, 1944.

In fact, it seems to me that any complete appraisal of the industrial history of the last two years demonstrates its essential correctness. As the text of the majority opinion in that case clearly shows, the Board at that time was fully aware that the economic position of the foremen would be improved if the Act were extended to facilitate collective bargaining by them. It was concluded, however, that the benefits which might thus accrue to supervisory employees were outweighed by the dangers inherent in the commingling of management and employee functions, and in the possible restrictive effect upon the freedom of rank and file employees.

The dissenting opinion in that case, however, contending that these dangers were not supported by evidence (although, of course, the majority observations were based upon the same premise implicit in the treatment by the entire Board of foremen in unfair labor practice cases) and, relying upon ex parte testimony given by a spokesman for the foremen's organizations in hearings before this Board and Congressional committees, argues that the grievances of foremen were so real and numerous that their right to bargain collectively under the protection of the Act should not be denied if there was "proper provision for organizational autonomy."

In controversies of this sort, it has been aptly said that "a page of history is worth a volume of logic."[6] Fortunately, on both points the inexorable facts now leave no room for speculation. The experience of the last two years has made it clear (1) that the standard foreman grievances, so repeatedly cited in argument before this Board, have by reason of an exhaustive investigation[7] of a panel of the War Labor Board turned out to be largely fanciful; (2) but to the extent to which the organization of foremen has expanded, the danger of collaboration with rank

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[6] Per Holmes, J., in New York Trust Company v. Eisner, 256 U. S. 329.

[7] Report and Findings of a Panel of the National War Labor Board in Certain Disputes Involving Supervisors, W. L. B. A-3397.

and file unions to the detriment of individual freedom of choice and established management techniques has proved all too real.

In enacting the National Labor Relations Act, Congress in the preamble of the statutes stated as one of its reasons an "inequality of bargaining power between employees and . . . employers . . . [which] tends to aggravate recurrent business depressions by . . epressing wage rates and the purchasing power of wa . arners in industry." Since one of the crucial questio . this controversy is the intent of Congress, it would seem xtremely far-fetched to believe that the Congress had in mind the kind of employees involved in the case before us. While there are undoubtedly some industries in which foremen are underpaid and neglected, the financial plight of the foremen in the Packard Motor Company can hardly be advanced as the reason for giving such supervisors legal encouragement to organize. As the majority opinion reveals, the employees in the bargaining unit which this decision finds appropriate receive salaries ranging from $5,000 to $6,000, including overtime compensation. The findings of the War Labor Board Panel, to which reference has already been made, fill out this picture. The foremen in the industries in which the Foreman's Association of America is active do not fall into the category of that "one-third of the Nation—ill-fed, ill-housed and ill-clothed," [8] for whose relief the social legislation of the New Deal was enacted. Instead, these men, according to the Panel, fall into the upper third of the Nation's income bracket. The Panel also found that in the very company in the instant case, as well as in the other companies where strikes have been conducted by the Foreman's Association of America, the record did not support the conclusion that these corporations allowed the foremen to be by-passed in handling grievances, or failed to back them up when they attempted to impose discipline. Moreover, with respect to promotions,

[8] This phrase was originally used by the President in a message to Congress advocating passage of the Fair Labor Standards Act. In subsequent speeches, however, he described all the social legislation sponsored by the Administration as having this general objective.

demotions and discharges, it was found that there were no serious grievances at Packard.[9]

Recent developments have made it equally clear that in the strongly organized industries, foremen's associations possess no real autonomy so far as effectuating their bargaining objectives unless they ally themselves in their policies and tactics with representatives of the employees whom they are hired to supervise. When this happens, of course, the proper line of demarcation between supervisor and supervised becomes hopelessly confused. It will be recalled that when the **Union Collieries** case was heard, the organization of mine officials whose petition for an election was entertained was an independent union. Shortly thereafter, it was given a charter by the United Mine Workers. Failing to achieve recognition by the operators, this new affiliate called a number of strikes last fall in various coal mines. Pursuant to Section 8 of the Smith-Connally Act, this Board conducted strike referenda in these mines. Although in several instances a majority of the foremen voted against striking, in every case reported

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[9] Typical of the findings of the Panel are the following:

"The supervisors in the cases before it are in general well paid . . . are . . . in the upper third of income receivers in the nation as a whole . . . are among the highly paid employees of American industry" (p. 142).

"The general level of compensation does not appear to be a serious complaint" (p. 142).

"Except in the Baldwin case, the Panel does not find that failure to pay for overtime work is an unresolved grievance" (p. 150).

"The record does not support the conclusion that companies involved intend to allow the foremen to be by-passed in handling grievances. Nor does it support the contention that these companies fail to back up their foremen when the foremen attempt to impose discipline" (p. 153).

"The greatest fear of foremen today is that they will be laid off or demoted when cutbacks and cancellations of war orders occur. This fear seems to be a principal reason why the interest of foremen in organizing is out of proportion to the nature and gravity of their grievances. In all of the companies before the Panel except one the war has caused enormous expansion of the rank and file workers and a corresponding increase in the number of supervisors" (p. 155).

"The Panel does not believe that it would be in the public interest for the National War Labor Board or any other government agency to prescribe a rule to govern managements in deciding which foremen they shall lay off, demote, or transfer" (p. 158).

"The Panel does not recommend that the Board approve the foremen's request that grievance procedure terminate in an appeal to a referee or arbitrator" (p. 165).

to us the strike call brought about a complete stoppage as the miners refused to cross the picket lines of this supposedly autonomous union. In other words, in order to make these strikes effective, the foremen's group found it necessary to achieve the same degree of collaboration with the production workers that exists among constituent unions of the Building Trades Department of the A. F. L. on a construction project.

It is common knowledge that under normal industrial conditions, strikes of factory foremen have little chance of succeeding, for the places of the strikers can readily be filled by promotion from the ranks from which the foremen themselves were originally selected. The record of this case reveals that in order to prevent its strikes from being broken, the Foreman's Association of America, the petitioner in the instant case, though nominally independent, has also been driven to resort to treaties of mutual aid and assistance with rank and file unions. In response to a question from the bench, counsel for the petitioner admitted in oral argument that "when the foremen struck there was a direct and express agreement between us and the responsible C. I. O. leaders that members of the C. I. O. Maintenance and Production Workers Union would not be permitted to take the place of foremen."[10] And in answering a question as to whether there was any agreement with the C. I. O. against crossing picket lines of the foremen, he stated that there had been in Republic Steel and that this matter was "adjusted in each plant in each instance."[11] Can anyone doubt that if such an "agreement" or "adjustment" was being negotiated on the eve of a foremen's strike, that supervisors would be inclined to think twice before overruling any union steward on grievances, no matter how unfounded, or disciplining, for infractions of the plant rules, employees influential in the

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[10] Transcript of Oral Argument, Packard Motor Car Company, at p. 71.

[11] Id., p. 73. Counsel also added that:

> I am bound to say I hope I will never hear of a foreman crossing a picket line by anything but agreement . . . and I hope that we won't be faithless to our obligation to our fellow workers and we hope he won't be to us, but as an equal give and take

rank and file union whose consent was necessary to the strike agreement? Is it theoretical to assume that the average worker, whose susceptibility to his foreman's influence we have so often noted in unfair labor practice cases, would hesitate to advocate adoption by his union of policies evincing lack of sympathy with the objectives of the organization to which his foreman belongs? Under these circumstances, "proper provision for organizational autonomy" is as unrealistic as the former notion—now discredited by the majority opinion—that the mere placing of different levels of supervisors in separate bargaining units somehow achieved the effect of segregating conflicting interests into water-tight compartments. It is difficult to find any logical distinction between supervisors' unions which have such alliances with the rank and file groups, and the labor organizations which we have hitherto proscribed because of the presence of supervisors in their councils.

I turn now to the arguments advanced by the majority for the theory that the **Maryland Drydock** rule has been found wanting in the light of recent developments. Briefly summarized these arguments seem to boil down to this:

(1) Foremen in mass production industries have lost much of the authority and policy making functions they possessed in the 1900s, and have viewed with some envy and resentment the superior collective bargaining strength of the organized workers they supervise. (2) Consequently, the membership of the Foreman's Association has greatly increased,[12] and, being denied access to the certification procedures of the Wagner Act, it has conducted strikes

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12 While the majority opinion notes that the Foreman's Association grew from approximately 10,392 in 1942 to 32,142 in 1944, it does not make clear whether most of this growth occurred before or after the **Maryland Drydock** decision. It appears, from a radio address of Robert Keys, the President of the Association, that the total membership stood at 15,000 in May 1943 so that it approximately doubled between the date of the **Maryland Drydock** decision and the date the hearing in this case was closed. In view of the fact, however, that the organization has a potential membership of more than a million in the industries which it is seeking to organize, it is difficult to agree with the conclusion that its expansion was not retarded by this Board's policy of dismissing petitions filed by it.

for recognition which have interrupted war production in several key plants. Therefore, it is urged that, since one of the purposes of the Wagner Act is to promote industrial peace, our rules of decision should be changed so as to compel employers to recognize the Foreman's Association as collective bargaining agent whenever it represents the majority of any supervisory group.

Other than the fact that there have been strikes, I do not find any "recent developments" to justify this conclusion. There is nothing startling in the finding that foremen in the mass production industries differ from foremen in the small shops of the 1900s. This was a development which occurred long before the passage of the National Labor Relations Act, and the expansion of heavy industry in recent years has simply accentuated the trend. We have adverted to it in prior cases. Moreover, it must be remembered that it is in these very mass production industries that company unionism developed in the 1920s and 1930s, and it is this very class of foremen, whom the Board now depicts as shorn of their management prerogatives, that we have always regarded as employer representatives when we find them engaged in any union activity which runs counter to the organizational efforts of a competing union.[13]

As for the strikes—hardly an unforeseen phenomenon in the light of the prediction contained in the dissenting opinion in the **Maryland Drydock** case[14]—I readily concede the importance of uninterrupted war production and concede that the particular strikes which occurred in the Detroit plants last spring would probably not have occurred if em-

[13] In the printing industry where we have permitted foremen to be included in the bargaining unit, we have not imputed the actions and utterances of foremen to their employer, except where they are specifically authorized to act as management's spokesmen. See **Matter of R. R. Donnelly & Sons Co.**, 60 N. L. R. B., No. 118.

[14] **Maryland Drydock**, supra, p. 749.

". . . Of course, foremen, as employees, have the right to organize and to seek recognition. Perhaps many employers will regard it as wise to grant this recognition. Insofar as such voluntary recognition is withheld, foremen must 'grin and bear it' or resort to the use of their economic power, an alternative which the Act was meant to discourage."

ployers had been compelled to recognize the Foreman's Association. Unfortunately, however, while a certification may take one issue out of the arena, it may merely be substituting the possibility of others. Our own files show that in most of the strikes which have occurred in wartime, the organizations involved were unions to which the orderly procedures of this Act were available. As we recently noted in our Annual Report,[15] the bulk of the strike notices seem to arise from dissatisfaction with the decisions of some government agencies. It is unfortunately no novelty to have disgruntled unions strike and interfere with production because this Board has refused to recognize units which they proposed as appropriate. Such defiance, however, can scarcely be deemed a justification for retreating from well-established legal principles. If strikes of this sort are sufficiently numerous to bring about substantial impairment of the flow of materials to the theatres of war, a wiser remedy would be legislation conferring upon this Board the same power to invoke judicial process against recalcitrant labor organizations which it now possesses with regard to disobedient employers. And since the foremen's strikes described by the majority were already known to the Board last fall, such recommendation might properly have been included in our last Annual Report to Congress. The adoption of the alternative course proposed by the majority smacks of a "peace-at-any-price" policy.

In any event, it would seem that any possible immediate gain in the way of eliminating some of the causes of strife is more than outweighed by the general long range impact of this decision upon industrial relations. A most disturbing feature of the majority opinion is the plain implication that all the bars are down which have hitherto been invoked to confine management and labor within their proper spheres of influence. It is true that the text does give some recognition to the dangers of divided allegiance if the foreman's organization is affiliated with the same union which represents the rank and file, since stress is

[15] Ninth Annual Report, pp. 73, 74.

laid upon the fact that the petitioning labor organization admits only supervisors to membership and is not affiliated with any other group. It also goes on to suggest that the certification could be revoked if any material change in the petitioner's present status should develop. This is rather a curious doctrine coming from this quarter. The authors of the present opinion also comprise the Board majority which has consistently adhered to the proposition enunciated in the plant-protection cases,[16] that once the Board had fixed the boundaries of an appropriate bargaining unit, it was powerless under the statute to reject as unqualified any representative selected by the majority. It therefore appears that the Board is now claiming a power over foremen's units which it disclaimed in the plant guard situation. If it lies within our discretion to overcome the undesirable aspects of divided allegiance in the foremen's cases by insisting that supervisors must have a different bargaining agent from the workers they supervise, it would seem incumbent upon us to exercise the same discretion with respect to monitorial employees,[17] where the factor of divided allegiance is present, although in a lesser degree.

[16] This issue first arose in **Matter of Packard Motor Company**, 47 N. L. R. B. 932, where a labor organization, already representing the production and maintenance workers, petitioned for a unit of plant-protection employees. The petition was opposed by the Company on the ground that in the collective agreement for the production workers the union had agreed not to accept or admit to membership plant guards. A majority of the Board consisting of Messrs. Millis and Leiserson rejected the Company's contention, holding:

> "No provision in the Act **permits** the Board, the employer, or a labor organization not acting as the statutory representative of the employees whose rights are in issue, to prevent such employees from exercising their right to bargain collectively in an appropriate unit **through any bargaining agent** whom they may desire to act as their exclusive representative." (Emphasis supplied.)

I dissented on the ground that the provision of the contract acted as an estoppel. In subsequent cases where this same precise issue was present Mr. Houston concurred with the original majority view. See **Matter of Ford Motor Company**, 47 N. L. R. B. 946; **Matter of Ford Motor Company**, 47 N. L. R. B. 939; **Matter of Federal Motor Truck Company**, 54 N. L. R. B. 984; **Matter of Packard Motor Car Company**, 60 N. L. R. B., No. 66.

[17] **N. L. R. B. v. Jones & Laughlin Steel Corp.**, December 8, 1944, 15 L. R. R. 517 (C. C. A. 6), J-872, setting aside 53 N. L. R. B. 1046. **N. L. R. B. v. Federal Motor Truck Company**, December 8, 1944, 15 L. R. R. 517 (C. C. A. 6), J-872, setting aside 54 N. L. R. B. 984.

It should be noted, however, that the bargaining unit which this decision defines includes persons in different levels of supervision, viz., general foremen, foremen, assistant foremen and special assignment men, although the higher officials have the power to make recommendations concerning rates of pay, transfer, rehire, lay-off, discharge and discipline of the supervisors in the next lower bracket, a factor which certainly infringes upon freedom of choice under all the accepted criteria in the company domination cases. A large portion of the opinion is devoted to minimizing the resultant danger of disloyalty by pointing out that the company may always resort to its normal disciplinary powers against disloyal or inefficient supervisors. Such an argument, of course, ignores the administrative difficulties of supervising the supervisor. It is particularly strange to find such a theory advanced in a tribunal created within the framework of Anglo-American jurisprudence which from earliest times has laid down the principle[18] that a fiduciary may not serve conflicting interests, and that the mere possibility of temptation renders voidable any transactions made in a dual capacity, irrespective of their honesty.

Even more significant is the apparent indifference of the Board to the close relationship of the petitioner with unions of production workers affiliated with the C. I. O. which the record revealed. Although the alleged independence of the Foreman's Association, in view of the holding in the **Soss** case,[19] was one of the pertinent issues in this proceeding, the majority of the Board in advance of the hearing refused to instruct its trial examiner to obtain

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18 **Michoud et al. v. Girod et al.**, 45 U. S. 503, 555. Where an agent owes fidelity to his principal, the law does not make the principal wait until the agent has been unfaithful and then punish him. ". . . it provides against the probability in many cases, and the danger in all cases, that the dictates of self interest will exercise a predominant influence, and supersede that of duty." **Pepper v. Litton**, 308 U. S. 295; **Meinhard v. Salmon**, 249 N. Y. 458, 164 N. E. 545 (1929).

19 **Matter of Soss Manufacturing Company**, 56 N. L. R. B. 348. In this case, protection under the Act for supervisors with respect to holding union membership was limited to mere passive membership in a craft organization or membership and activity in organizations composed entirely of foremen and completely unaffiliated with groups representing production workers.

evidence on this point.[20] Such facts as do bear on the question therefore were either introduced by the Company or elicited from petitioner's counsel at the argument before the full Board. Included in this former category were the resolutions of support on the part of the Michigan C. I. O. Council, the refusal of the organized steel workers at Republic to cross the foremen's picket line, and the interference of production workers at Briggs with the plant officials who tried to maintain continuous operation during the strike. A tendency to view these facts as immaterial is also illustrated by the majority's holding certain related evidence to be incompetent,[21] although in other respects the majority opinion makes the widest use of secondary material and even personal experience. It would therefore seem that despite the footnote expressing the view of one member that the applicability of the present decision to affiliated organizations is still an open one, there is little doubt as to the form such a decision will take when a case presenting this issue arises.

In making these observations, I am fully aware that there is a school of thought which will regard them as unduly pessimistic, in view of the fact that foremen for many years have been organized in the printing, maritime, railroad and building construction industries. This state of affairs has frequently been cited as disproving the theory that industrial efficiency is impaired or union democracy frustrated by the presence of foremen and workers in the

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[20] Minute of Executive Meeting of the Board, December 16, 1944:

"**Packard Motor Car Company**, 7-R-1884: The Board, with Board Member Reilly dissenting, rejected Board Member Reilly's recommendation that the Trial Examiner in this case be instructed to elicit evidence concerning the source of the petitioner's funds and the nature of its expenditures, its connection, if any, with the UAW-CIO or other unions which admit production workers to membership, and the extent, if any, to which it has sought or received support from the UAW-CIO or other affiliated unions in organizing or in making its strikes effective."

[21] The evidence found to be incompetent consisted of a pamphlet distributed at the Murray Corporation, asking for the support of the rank and file, and a report of a hearings officer of the Michigan Unemployment Compensation Commission, rejecting certain production workers' applications for unemployment insurance on the ground that the claimants had participated as sympathetic strikers in a stoppage called by the Foreman's Association of America.

same bargaining organization. These examples have little relevance to the controversy. For one thing, only two of these industries—the printing and maritime trades—even fall within the scope of the National Labor Relations Act, and the pattern of collective bargaining established in them grew up quite independently of this statute and in some respects is quite contrary to its basic concepts. Because of the traditions of the sea, implemented by the admiralty laws, there is little danger of the officers and crew merging their respective labor organizations. In the newspaper field, where the foreman is traditionally a member of the Printers' Union, the composing room staff operates almost as independently of the publisher as would be the case if the work was done by a job printing establishment.[22] Then again, in none of the enumerated industries is this country particularly unique, and the technological developments in these fields in recent years have been relatively minor. An entirely different spectacle is presented by the mass production industries, where the constant development of technological science, with the resultant subdivision of labor operations, requires constant attention in the coordination of production with supervisory and engineering techniques. It is these industries which have made this country the foremost industrial nation of the world and contributed so heavily to war production, and it is in these industries that the basic principles of the National Labor Relations Act have been most frequently applied. It therefore seems to me that we may well be forcing these industries and their employees into a Procrustean bed when we project upon them practices which have grown up in entirely unrelated fields.

Signed at Washington, D. C., this 26th day of March, 1945.

GERARD D. REILLY,
Member,
National Labor Relations Board.

(Seal)

[22] In many newspapers there is a rule that the only "representative of management" who is permitted to go into the composing room and give any directions is the make-up man from the news room, and his duties are confined to see that the make-up conforms with the "dummy" prepared at the copy desk.

BOARD'S EXHIBIT NO. 10.

United States of America.
National Labor Relations Board.

In the Matter of

PACKARD MOTOR CAR COMPANY
and
FOREMAN'S ASSOCIATION OF AMERICA

Case No. 7-R-1884

Tally of Ballots.

(Date Issued April 18, 1945.)

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1. Approximate number of eligible voters	1315
2. Void ballots	0
3. Votes cast for Foreman's Association of America	666
4. Votes cast for	...
5. Votes cast for	...
6. Votes cast against participating labor organization(s)	435
7. Valid votes counted (sum of 3, 4, 5, and 6)	1101
8. Challenged ballots	155
9. Valid votes counted plus challenged ballots (sum of 7 and 8)	1256

10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes has been cast for Foreman's Association of America.

For the Regional Director
RUTH GREENBERG.

Board's Exhibit No. 11

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For Foreman's Association of America	For Packard Motor Car Company
J. DARGAN,	A. A. SOURS,
H. BENNER.	J. E. LOCHER.

Air Mail

BOARD'S EXHIBIT NO. 11.

United States of America.

Before the National Labor Relations Board.

In the Matter of

PACKARD MOTOR CAR COMPANY

and

FOREMAN'S ASSOCIATION OF AMERICA

} Case No. 7-R-1884

Certification of Representatives.

On April 17, 1945, an election was conducted in the above matter pursuant to the Board's direction of March 26, 1945 (61 N. L. R. B., No. 3), and in accordance with the Rules

and Regulations of the Board. It appears from the Tally of Ballots that a collective bargaining representative has been selected, since of the approximately 1315 eligible voters, 1101 cast valid votes, of which 666 were for the Union, 435 against, and the 155 challenged ballots are insufficient to affect the results of the election. No objections were filed by any of the parties within the time provided therefor.

By virtue of and pursuant to the power vested in the Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Sections 9 and 10, of the Board's Rules and Regulations—Series 3, as amended,

It Is Hereby Certified that Foreman's Association of America, unaffiliated, has been designated and selected by a majority of all general foremen, foremen, assistant foremen, and special assignment men employed by Packard Motor Car Company at its plants in Detroit, Michigan, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, the said organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

Dated, Washington, D. C., this 28 day of April, 1945.

By direction of the Board:

JOHN E. LAWYER,
Chief, Order Section.

(Seal)
G

BOARD'S EXHIBIT NO. 12.

FOREMAN'S ASSOCIATION OF AMERICA

National Office

Phone CAdillac 2828 515 Barlum Tower

Detroit 26—Michigan

Registered—Return Receipt Requested.

May 2, 1945.

Mr. George T. Christopher, Pres.,
Packard Motor Car Company,
1580 E. Grand Boulevard,
Detroit, 11, Michigan.

Dear Mr. Christopher:—

Under date of April 28th, 1945, the National Labor Relations Board issued its certification designating Foreman's Association of America as the duly elected collective bargaining representative of the general foremen, foremen, assistant foremen and special assignment men employed by Packard Motor Car Company in its Detroit plants, and a true copy of this certification has been received in this office and doubtless by your Company.

Inasmuch as the Packard Chapter of Foreman's Association of America has long since demanded recognition and collective bargaining with your Company on issues affecting the four classes of foremen above specified, and it is now the legally constituted agency for such bargaining, demand is hereby made that a time and place be specified at an early date for the commencement of collective bargaining in the premises. Within reasonable limits, we are agreeable to a time and place that meets your convenience, but we feel that your reply in writing to this demand

should be made within one week from the date of this letter.

Very truly yours,
FOREMAN'S ASSOCIATION OF AMERICA
By: ROBERT H. KEYS
National President

RHK:JC
cc—W. M. Nelson, Esq.
Prosper Traen, Pres.
Chapter #5.

BOARD'S EXHIBIT NO. 13.

Detroit, Michigan
May 11, 1945

Mr. Robert H. Keys, President
Foreman's Association of America
515 Barlum Tower
Detroit, Michigan

Dear Mr. Keys: In re: Packard Motor Car Company
and
Foreman's Association of America
NLRB Case No. 7-R-1884

Your letter of May 2, relative to the Certificate of Representation issued by the National Labor Relations Board in the above case, has been received.

It is my suggestion that we have a meeting, at a time mutually agreeable, to discuss this matter. I shall be out of the city most of next week, but if it suits your convenience this meeting can be held in my office on Friday, May 18, at 10:00 o'clock in the morning. Kindly advise me whether these arrangements are satisfactory.

Very truly yours,
s/o GEO T CHRISTOPHER
President
Packard Motor Car Company

GTC

BOARD'S EXHIBIT NO. 14.

FOREMAN'S ASSOCIATION OF AMERICA

National Office

Phone CAdillac 2828 515 Barlum Tower
Detroit 26—Michigan

May 12th, 1945

Mr George T. Christopher, President
Packard Motor Car Company
1580 East Grand Boulevard
Detroit 11, Michigan

Dear Mr. Christopher:

Acknowledging receipt of your letter to me dated May 11th, 1945, you may expect me in your office on Friday, May 18th, 1945, at 10:00 A. M., that being the time and place appointed by you pursuant to the request contained in my letter to you dated May 2nd, 1945.

Very truly yours,

ROBERT H. KEYS,
President.
Foreman's Association of America

RHK-el
cc: WMNelson—atty
cc: PTraen—Pres #5

BOARD'S EXHIBIT NO. 15.

Packard Motor Car Company
Detroit, Michigan

May 18, 1945.

Mr. Robert H. Keys, President
Foreman's Association of America
515 Barlum Tower
Detroit, 26, Michigan

Dear Mr. Keys: In re: Packard Motor Car Company
and
Foreman's Association of America
NLRB Case No. 7-R-1884

This will acknowledge your letter of May 2, 1945, requesting the Packard Motor Car Company to meet with you as the representative of the general foremen, foremen, assistant foremen, and special assignment men, for the purpose of collective bargaining pursuant to the Certificate of Representation issued by the National Labor Relations Board on April 28, 1945, in the above case.

The Packard Motor Car Company has always taken the position that foremen, as the representatives of management, are a part of management and are not and were never intended to be considered "employees" as that term is used in the National Labor Relations Act. The Company has opposed the representation of this part or any part of management by any union as it is the considered opinion of the Company that the result would be detrimental to the foremen, to the Company, and to the country at large.

It is the position of the Company that the National Labor Relations Board had no jurisdiction in the above proceeding; that its order of April 28, 1945, is unconstitutional, void, and of no force and effect, and that the Company under the circumstances cannot comply with this order.

Board's Exhibit No. 15

It is fundamental under our system of government that where differences arise as to the scope or interpretation of a law the party aggrieved has the right to follow the orderly procedures established by law to resolve such differences. Under the law the Company has the right to have the action of the National Labor Relations Board reviewed by the courts. It is the intention of the Company to seek such a judicial review of this order.

The issues involved in the above case are vital to the future of industry in the United States. They are of such importance that the parties concerned should not only be willing, but should insist that all legal procedure provided for a judicial review of the actions of the National Labor Relations Board be expeditiously carried out in order that the rights of the parties may be finally and definitely settled. The Company feels that it not only has a right to such a review but that in view of the importance of the question, it is the duty of the Company to secure such a judicial review.

The Company further feels that it has a right to assume that the Foreman's Association of America will co-operate to bring about such an expeditious review.

It follows that the Packard Motor Car Company must refuse to meet with the Foreman's Association of America as the representative of its general foremen, foremen, assistant foremen, and special assignment men for the purpose of collective bargaining as it is only through proceedings following such a refusal that the courts can obtain jurisdiction to review the case.

Very truly yours,

GEO. T. CHRISTOPHER /s/
President

GTC-RM

BOARD'S EXHIBIT NO. 16.

June 15, 1945

Packard Motor Car Company
1580 E. Grand Blvd.
Detroit 11, Michigan

Re: Packard Motor Car Company
Case No. 7-C-1452

Gentlemen:

Supplementing the information which you received from the Regional Director of this office on June 11, 1945, you are advised that the Foreman's Association of America has alleged that your company has refused on or about May 18, 1945, and has at all times since refused to bargain with the said Foreman's Association of America as exclusive representative of certain of your employees for the purpose of collective bargaining.

Pursuant to investigation of the above matter by this office, it is requested that you prepare and submit a statement setting forth the following information and data:

1. Does the company concede that the Foreman's Association of America has been elected the exclusive bargaining representative by a majority of the company's employees within a bargaining unit found appropriate by the Board in Case No. 7-R-1884?

2. Does the company concede that the Board did on April 28, 1945, certify the Foreman's Association of America as the exclusive bargaining representative for all employees of the company classified as general foremen, foremen, assistant foremen and special assignment men employed by the company at its plants in Detroit, Michigan?

3. What is the company's position with regard to bargaining with the Foreman's Association of America, pursuant to the Certification of Representatives issued by the

Board's Exhibit No. 16

Board in Case No. 7-R-1884? Does the company admit that it has refused to bargain with the Foreman's Association of America, as charged above? If the company has refused to bargain with the Foreman's Association of America, as charged, what are the company's reasons for its refusal?

4. Have there been any substantial changes in the business of the company or its operations which could conceivably form the basis for valid excuse to not bargain with the Foreman's Association of America, as charged?

5. Does the company concede that a full and complete hearing was accorded the company on all issues in connection with Case No. 7-R-1884?

It is requested that full and complete answers to the above be furnished this office at the company's earliest convenience and preferably not later than June 27, 1945.

Very truly yours,

HAROLD L. HUDSON
Field Examiner

HLH:bb

BOARD'S EXHIBIT NO. 17.

June 18, 1945

Packard Motor Car Company
1580 E. Grand Boulevard
Detroit, 11, Michigan

Re: Packard Motor Car Company
Case No. 7-C-1452

Gentlemen:

I wish to correct item 4 on page 2 of my letter to you dated June 15, 1945. Will you please substitute the following query:

> 4. Have there been any substantial changes in the business of the company or its operations from that prevailing at the time of the Board's hearing in Case No. 7-R-1884, which, by itself, could conceivably form the basis for valid excuse to not bargain with the Foreman's Association of America, as charged?

You will note in my letter of June 15, 1945, that replies are requested at your earliest convenience and preferably not later than June 27, 1945.

Very truly yours,

HAROLD L. HUDSON
Trial Examiner.

HLH:ITG

BOARD'S EXHIBIT NO. 18.

June 25, 1945

Bodman, Longley, Bogle, Middleton & Armstrong
1400 Buhl Building
Detroit 26, Michigan

Mr. Harold L. Hudson, Field Examiner
National Labor Relations Board
Seventh Region
National Bank Building
Detroit, Michigan

Re: Packard Motor Car Company
Case No. 7-C-1452

Dear Sir:

This will acknowledge your letters of June 15, 1945 and June 18, 1945 addressed to the Packard Motor Car Company in which you request the Company to submit a statement setting forth certain information and data in answer to the questions submitted in the above letters. We will first state the question and then our answer thereto:

1. Does the Company concede that the Foreman's Association of America has been elected the exclusive bargaining representative by a majority of the Company's employees within a bargaining unit found appropriate by the Board in Case No. 7-R-1884?

The Company admits that it has received a decision of the National Labor Relations Board dated March 26, 1945, in Case No. 7-R-1884, in which the majority of the Board found that all general foremen, foremen, assistant foremen and special assignment men employed by the Company at its plants in Detroit, Michigan, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the National Labor Relations Act and directing that an election by secret ballot be held to deter-

mine whether or not the individuals comprising said unit desire to be represented by the Foreman's Association of America for the purposes of collective bargaining.

The Company further admits that an election was conducted on April 17, 1945; and that on or about April 30, 1945, the Company received through the mails from the National Labor Relations Board, Washington, D. C., an instrument dated April 28, 1945, entitled in Case No. 7-R-1884 and designated as "Certification of Representatives", setting forth the holding of such election and the result thereof.

The Company denies the National Labor Relations Board had any jurisdiction in the matter or any right, power, authority or jurisdiction to hold any hearing in Case No. 7-R-1884 or to issue any findings therein or to order or direct the holding of any election or issue any certification or order thereon, and the Company states that the findings and determination of the National Labor Relations Board in the decision of March 26, 1945, and the "Certification of Representatives" referred to above are without legal force or effect, and are not binding on the Company and are wholly void, and therefore denies that the Foreman's Association of America has been elected the exclusive bargaining agent of any employees of the Company.

2. Does the Company concede that the Board did on April 28, 1945, certify the Foreman's Association of America as the exclusive bargaining representative for all employees of the Company classified as general foremen, foremen, assistant foremen and special assignment men employed by the Company at its plants in Detroit, Michigan?

The Company admits that the last paragraph of the "Certification of Representatives" referred to above purports to certify that the Foreman's Association of America (unaffiliated) has been designated and selected by a majority of all of the general foremen, foremen, assistant foremen and special assignment

men of Packard Motor Car Company at its plants in Detroit, Michigan, as their representative for the purpose of collective bargaining, and that pursuant to Section 9 (a) of the National Labor Relations Act, the said organization is the exclusive representative of all such individuals for the purposes therein set forth.

The Company denies that the National Labor Relations Board had any right, power, authority or jurisdiction to issue any certification or order in the proceeding referred to and that any such certification or order is not binding on the Company and is wholly void and of no force and effect.

3. What is the Company's position with regard to bargaining with the Foreman's Association of America, pursuant to the "Certification of Representatives" issued by the Board in Case No. 7-R-1884? Does the Company admit that it has refused to bargain with the Foreman's Association of America, as charged above? If the Company has refused to bargain with the Foreman's Association of America, as charged, what are the Company's reasons for its refusal?

The Company states that it has at all times refused to bargain with the Foreman's Association of America as the exclusive representative of its general foremen, foremen, assistant foremen and special assignment men.

The Company at the hearing held in connection with Case No. 7-R-1884 and in the brief filed in that proceeding developed and set forth certain reasons why it refused to collectively bargain with the Foreman's Association of America and reference is made to the transcript of the testimony taken in that proceeding and to said brief.

Collective bargaining with any international union as the representative of the general foremen, foremen, assistant foremen and special assignment men would interfere with the war effort, delay reconversion to peacetime production, increase production costs and the cost of war and the cost of living, and would be

detrimental to the best interests of the Company, labor and the country at large. It would bring about a drastic change in the long established managerial structure of the Company which would necessitate taking from the general foremen, foremen, assistant foremen and special assignment men many of the powers, duties and responsibilities they now have and delegating the same to others in the managerial chain. This would result in delays, increased cost of production, and would adversely affect the Company, its foremen, the rank and file workers and the public in general.

There is no need or necessity for the representation of the foremen level by any international union. This fact is clearly demonstrated by the report of the Special Panel of the National War Labor Board filed in the National War Labor Proceedings No. 111-5436-D, and to which reference is hereby made.

The Company is not required by the National Labor Relations Act or any other law to collectively bargain with any international union as the representatives of the foreman level of management. The action of the National Labor Relations Board in Case No. 7-R-1884 is arbitrary, capricious, unreasonable and unwarranted, and the result will be to so disorganize the established manner of doing business as to render such action unconstitutional and void.

A more complete statement of the position of the Company will be made in the event a hearing is had on the alleged charge made by the Foreman's Association of America that the Company is engaged in an unfair labor practice within the meaning of Section 8, subdivisions (1) and (5) of the National Labor Relations Act.

4. Have there been any substantial changes in the business of the Company or its operations from that prevailing at the time of the Board's hearing in Case No. 7-R-1884, which, by itself, could conceivably form the basis for valid excuse to not bargain with the Foreman's Association of America, as charged?

Board's Exhibit No. 18

The Company states that there have been no substantial changes in the business of the Company or its operations from that prevailing at the time of the Board's hearing in Case No. 7-R-1884, but states that the same reasons for not bargaining with the Foreman's Association that existed at that time still exist.

The Company further states that since the date of hearing in Case No. 7-R-1884 it has been conclusively demonstrated that no foreman's union can be independent and that any such organization will unquestionably be controlled or taken over by the rank and file unions.

5. Does the Company concede that a full and complete hearing was accorded the Company on all issues in connection with Case No. 7-R-1884?

The Company admits that a hearing was held in Detroit on Case No. 7-R-1884 and was fairly and properly conducted. The Company takes the position, however, that the rulings of the Trial Examiner in connection with the admission of certain evidence offered by the Company was erroneous and should be set aside, and that if a hearing is held by the National Labor Relations Board on any complaint that the Company is engaged in an unfair labor practice, the Company will insist upon introducing such further evidence as it believes to be pertinent to the issues involved.

Yours truly,

BODMAN, LONGLEY, BOGLE, MIDDLETON & ARMSTRONG,

By LOUIS F. DAHLING,

Attorneys for Packard Motor Car Company.

BOARD'S EXHIBIT NO. 19.

REPORT AND FINDINGS OF A PANEL OF THE NATIONAL WAR LABOR BOARD IN CERTAIN DISPUTES INVOLVING SUPERVISORS.

January 19, 1945.

The Honorable William H. Davis,
Chairman, National War Labor Board,
Washington, D. C.

Dear Mr. Davis:

The special Panel appointed by the National War Labor Board on May 31, 1944, pursuant to its resolution of May 18, 1944, to hear certain dispute cases involving unions representing foremen and other supervisory employees, herewith transmits its report and findings to the Board.

Respectfully yours,

/s/ SUMNER H. SLICHTER,
/s/ ROBERT D. CALKINS,
/s/ WILLIAM H. SPOHN.

Board's Exhibit No. 19

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PART ONE.

INTRODUCTION.

Report and Findings of the Panel in Certain Disputes Involving Foremen.

I. Introduction.

This report is submitted by the special Panel appointed by the National War Labor Board on May 31, 1944, pursuant to its Resolution of May 18, 1944, a copy of which follows:

> Whereas, the Secretary of Labor has certified to the National War Labor Board for appropriate action the following dispute cases involving unions representing foremen and other supervisory employees:
>
> Murray Corporation of America (Case No. 111-2882-D)
>
> Briggs Manufacturing Company (Case No. 111-4746-D)

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Chrysler Corporation (Case No. 111-4747-D)
Republic Steel Corporation (Case No. 111-4748-D)
Maryland Drydock Company (Case No. 111-5190-D)
Packard Motor Car Company (Case No. 111-5436-D)
Bohn Aluminum and Brass Corporation (Case No. 111-5799-D)
Baldwin Locomotive Works (Case No. 111-6801-D)

Be It Resolved:

1. That, in accordance with the opinion of its General Counsel that the foregoing disputes are disputes between employees and their employers within the meaning of the War Labor Disputes Act, the Board has jurisdiction to consider and to determine, pursuant to the provisions of the War Labor Disputes Act and Executive Order No. 9017, the foregoing disputes, exclusive of issues concerning bargaining rights and alleged discriminatory discharges under the National Labor Relations Act;

2. That, in view of the difficult questions of policy involved in determining in what manner the Board should exercise its jurisdiction, and because the records in the foregoing cases do not contain sufficient facts upon which to decide such policy questions, the Board will appoint a panel to hear the representatives of the companies and of the foremen's organizations involved in the foregoing cases, to conduct such supplementary inquiries or investigations as the panel may deem desirable, and to make a factual report to the Board on the following matters with respect to each of the foregoing cases:

(a) The nature and gravity of any unresolved grievances of the foremen;

(b) The present or potential procedures available for the settlement of these differences without the necessity of further governmental action;

(c) The history and effects of any collective relationships between the foremen's organizations and the companies;

(d) The nature and composition of the foremen's organizations in each of the plants involved, and the duties performed by the various types of supervisory employees within each plant; and

(e). Any other facts which the Panel might find to be of importance to the Board in determining what action it should take in the foregoing cases.

Representing the Public:

William H. Davis, Chairman
George W. Taylor, Vice Chairman
Lloyd K. Garrison
Edwin E. Witte

Representing Labor:
Robert J. Watt
James A. Brownlow
Carl J. Shipley
John Brophy

Representing Industry:
Vincent P. Ahearn
Clarence O. Skinner
Frederick S. Fales
J. Holmes Davis

The foregoing resolution was amended on June 15, 1944, to include five additional cases:

Aeronautical Products Company (Case No. 111-8487-D)
Federal Shipbuilding and Dry Dock Company (Case No. 111-8243-D)
Gar Wood Industries, Incorporated (Case No. 111-8486-D)
Hudson Motor Car Company (Case No. 111-8514-D)
New York Shipbuilding Company (Case No. 111-8387-D)

The Panel consisted of Professor Sumner H. Slichter, Chairman, Dean Robert Calkens and William H. Spohn. Pursuant to the resolution of May 18, 1944, of the Board, the Panel convened for hearings in Detroit on June 14, 1944. Hearings continued intermittently until August 4, 1944.[1] Subsequent hearings were held by one or more mem-

[1] Hearings were held in Detroit for the following cases: Chrysler Corporation, Briggs Manufacturing Company; Murray Corporation, Packard Motor Car Company, Bohn Aluminum and Brass Corporation, Aeronautical Products Corporation, Gar Wood Industries, Hudson Motor Car Company, on the following dates: June 14-16, 19-21, 26-28, July 10-12, 17-19, 31, Aug. 4.

bers of the Panel as follows: New York City, August 7 and 8, Federal Shipbuilding and Dry Dock Company; New York City, August 28, New York Shipbuilding Corporation; Philadelphia, August 9 and 18, Baldwin Locomotive Works; Washington, August 14 and 15, Maryland Drydock Company; Detroit, August 18, Republic Steel Corporation. Final arguments were held in Detroit on October 3 and 4, 1944, and in New York for the Republic Steel Corporation, Federal Shipbuilding Corporation and Baldwin Locomotive Works on October 10, 1944.

Appearances in these casese were made as follows:

Messrs. Rathbone, Perry, Kelley and Drye,

By Nicholas Kelley, Esq., and Theodore R. Iserman, 70 Broadway, New York City, and Mr. Robert W. Conder (Director Labor Relations), Detroit,
Appearing for Chrysler Corporation.

Messrs. Bodman, Longley, Bogle, Middleton & Armstrong,

By L. F. Dahling, Esq., 1400 Ruhl Bldg., Detroit,
Appearing for Packard Motor Car Company.

Messrs. Butzel, Eaman, Long, Gust & Bills,

By Victor W. Klein, Esq., National Bank Bldg., Detroit,
Appearing for Murray Body Corporation and Bohn Aluminum and Brass Corporation.

Messrs. Beaumont, Smith and Harris,

By Albert Meder, Esq., and Percy J. Donovan, Esq., Ford Building, Detroit,
Appearing for Briggs Manufacturing Company and Hudson Motor Car Company, Aeronautical Products Company and Gar Wood Industries; and

Milton W. Kleckner, Esq., 1720 Dime Bank Bldg., Detroit,
Also appearing for Gar Wood Industries.

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Frederick H. Knight, Esq., Miles W. Kirkpatrick, Esq., and W. H. Holcomb,
Appearing for The Baldwin Locomotive Works.

B. L. Rawlins, Esq., and J. H. Love, Esq.,
Appearing for Federal Shipbuilding and Drydock Company.

William D. Macmillan, Esq., Counsel,
Appearing for the Maryland Drydock;

David Ruml, Esq., Assistant to the President,
Appearing for the Maryland Drydock;

R. Douglas Dauterich, Esq., Industrial Relations Representative,
Appearing for the Maryland Drydock.

Colonel Kenneth Gardner and B. G. Parker, Esq.,
Appearing for the New York Shipbuilding Corporation.

T. F. Patton, Esq.,
Appearing for Republic Steel Corporation.

Louis H. Wilderman, Esq.,
Appearing for The International Association of Machinists, Lodge 91, A. F. L.

Mr. Robert H. Keys,
515 Barlum Tower, Detroit, Michigan,
Appearing for Foreman's Association of America.

Walter Nelson, Esq.,
1438 Dime Building, Detroit, Michigan,
Appearing for Foreman's Association of America.

M. H. Goldstein, Esq.,
Appearing for the Leadingmen's Organizing Committee in the Federal Shipbuilding and Drydock Company, for the sub-foremen's group in the New York Shipbuilding Corporation, and the Negotiating Committee of Supervisory Employees in the Maryland Drydock Company.

Board's Exhibit No. 19

All of the employers at different times in the hearings entered objections to the jurisdiction of the National War Labor Board and of the Panel. The Panel has considered that objections to its jurisdiction, its right and power to take testimony in regard to grievances, and exceptions to the proofs should be addressed to the National War Labor Board. Hence the Panel has been free to accord any exception or reservation presented by any person to the record, and it has repeatedly announced that acquiescence in the rulings of the Panel on the presentation of evidence would not operate to the prejudice of any witness or any party to the proceeding. Each employer, while denying the jurisdiction of the Panel to proceed, has presented its case. Under the general statements or rulings made through the proceeding, the Panel advised that it is interested in learning the facts, without prejudice to the party which produced them.

Nothing in this report ought to be considered as a denial of the right of any party to the proceeding to question the jurisdiction either of the Panel or the National War Labor Board, or that such party has waived any right it may possess in that respect.

The disputes referred to the Panel do not in all cases pertain to all plants of the employer. The disputes concern various classes of foremen and supervisory employees, hereinafter referred to interchangeably as foremen and supervisors. The plants involved in these disputes, the several classes of supervisory employees involved, and the approximate number of supervisors in each rank, as developed in the record, and the number certified to the War Labor Board are set forth in the following table:

Board's Exhibit No. 19

COMPANY, PLANTS, CLASSIFICATION, NUMBER OF EMPLOYEES, CERTIFIED AND INVOLVED.(a)

Company	Plant	Classification	Approximate No. of Employees Involved	No. Certified
Aeronautical Products	.....	Foremen	25 (b)	40
Baldwin	Eddystone	Superintendent	11 (c)	300
		Ass't Superintendent	4	
		Ass't to Superintendent	1	
		General Foremen	18	
		Ass't General Foremen	8	
		Foremen	77	
		Ass't Foremen	430	
		Supervisors of Police	9	
		Supervisors of Fire Department	2	
		Miscellaneous	134	
Bohn Aluminum and Brass Company	Adrian	Foremen	45 (d)	445
Briggs Mfg.	Mack, Outer Drive, Milwaukee, and Vernon	General Foremen	111 (e)	713
		Foremen	717	
Chrysler	DeSoto-Wyoming	General Foremen	31 (f)	200
		Foremen	179	
Federal Shipbuilding & Drydock	Kearney and Newark	Working Leaders Loading Men	2185 (g)	2000
Gar Wood Industries, Inc.	.....	General Foremen	10 (h)	130
		Foremen	111	130
Hudson Motor	Main Plant,	General Foremen	110 (i)	600
		Ass't Gen. Foremen	9	
	Axle Plant, and Gratiot	Foremen	316	
		Ass't Foremen	100	
Maryland Drydock	.....	Temporary Sup'r	140 (j)	850
		Working Leaders	537	
		Leaders	119	
Murray Corporation	Ecorse and Main	Dept. Supervisors	112 (k)	450
		Shift "	52	
		Section "	436	
New York Shipbuilding	.....	Subforemen	692 (l)	850

Board's Exhibit No. 19

COMPANY, PLANTS, CLASSIFICATION, NUMBER OF EMPLOYEES, CERTIFIED AND INVOLVED.(a)

Company	Plant	Classification	Approximate No. of Employees Involved.	No. Certified
Packard	Detroit	Gen. Foremen	132 (m)	750
		Foremen	597	
		Ass't. Foremen	84	
		Special Assignment Men	59	
Republic Steel Corporation	98" Strip Mill	General Foremen	2 (n)	70
		Foremen	7	
		Turn Foremen	38	
		Asst. Foremen	1	
		Loader Foremen	12	
		Warehouse Foremen	2	
		Turn Roller		

(a) It has not been possible to determine the number of supervisory employees actually involved in many cases. The figures shown will be qualified as to their meaning in the accompanying footnotes.

(b) Total number of foremen, p. 255. Company testimony indicates 24 foremen on payroll, p. 3306.

(c) Total employment, Company, Exhibit No. 23. Union withdrew its claim to superintendents during the course of the hearings (N. Y. Rec. Oct. 10, Pg. 158).

(d) The figure shown is number certified. At the time of the strike there were 28 members in the Association. At time of the hearing the F. A. A. did not have any members in the plant (p. 848).

(e) Company Exhibit No. 1 (Record p. 2049).

(f) Company Exhibit No. 5.

(g) Statement on behalf of Leadingmen's Organizing Committee, p. 4.

(h) Company Exhibit No. 1.

(i) Detroit Record, p. 455. Witness for F. A. A. claims 658 members but this figure includes supervisors and expeditors.

(j) Information supplied in response to Panel's request during course of hearing.

(k) Company Exhibit No. 20.

(l) Brief on behalf of Sub-Foremen, p. 1.

(m) Company Exhibit No. 2[illegible]

(n) Information supplied by Company after hearing.

Board's Exhibit No. 19

In the following disputes the supervisory employees are represented by the Foreman's Association of America:

Aeronautical Products
Bohn Aluminum and Brass Company
Briggs Manufacturing Company
Chrysler Corporation
Gar Wood Industries, Inc.
Hudson Motor Car Company
Murray Corporation
Packard Motor Car Company
Republic Steel Corporation

In the Baldwin Locomotive Works supervisory employees involved are represented by Lodge 91 of the International Association of Machinists, A. F. L.

In the Federal Shipbuilding and Drydock Company, the supervisory employees appear as the Leading Men's Organizing Committee; in the Maryland Dry Dock Company, they appear as a group of employees formerly represented by Local 31 of the Industrial Union of Marine and Shipbuilding Workers of America, C. I. O., and represented in these proceedings by a negotiating Committee of Seven; and in the New York Shipbuilding Corporation, they appear as a group of sub-foremen having membership in Local I of the Industrial Union of Marine and Shipbuilding Workers of America.

II. The Background of These Disputes.

The Foreman's Association of America grew out of an organization of foremen in the Ford Motor Company in August, 1941. The history of the Association is described later in this Report. The foremen in the following companies organized during 1942-44 and received charters from the Foreman's Association of America on the dates indicated: Briggs (February 16, 1942), Chrysler (September 22, 1942), Packard (October 13, 1942), Hudson (November 17, 1942), Gar Wood (November 24, 1942), Murray (May 2, 1943), Republic Steel (July 1, 1943), Bohn Aluminum (December 13, 1943), Aeronautical Products (May 12, 1944).

Board's Exhibit No. 19

Upon the organization of these chapters the Foreman's Association of America made various demands upon the companies for meetings to discuss matters with the Association as a representative of the foremen. The history of these demands are reviewed in the findings respecting the individual companies. Generally speaking, however, the requests were refused. The Murray Corporation was served with a letter of complaint setting forth 15 grievances on August 13, 1943. A more or less similar letter was sent to Briggs, Chrysler, Packard, Hudson, Gar Wood, and Republic Steel on August 30, 1943. The letter to Briggs is typical of those sent to other companies. It reads:

August 30, 1943

Mr. William P. Brown, President
Briggs Manufacturing Company
11631 Mack Avenue
Detroit, Michigan

Dear Sir:

This letter will inform you of the grievances of your supervisory employees. A copy of this letter is being sent to the United States Conciliation Service of the Department of Labor and the National War Labor Board.

We will appreciate receiving an answer from you within the next ten days stating the time and place that representatives of the Briggs Manufacturing Company will meet with the elected representatives of Local Chapter #2, Foreman's Association of America, to discuss these problems.

A vast majority of the supervisory staff at the Detroit plants of the Briggs Manufacturing Company are members of Local Chapter #2, Foreman's Association of America, and they have requested that we submit the following grievances to you:

1. Refusal of the Company to recognize Local Chapter #2, Foreman's Association of America, as the exclusive bargaining agent for its supervisors. (We

are demanding that the Company recognize Local Chapter #2, Foreman's Association of America, as the exclusive bargaining agent for its supervisory staff.)

2. Refusal of the Company to reinstate Mr. John W. Towsley. Mr. Towsley was discharged without adequate cause and treated unreasonably. (We are demanding that Mr. Towsley be reinstated and paid for all time lost up to the date of his reinstatement.)

3. Refusal of the Company to recognize seniority rights. (We are demanding that the Company recognize a negotiated seniority plant.)

4. Refusal of the Company to make definite sick leave provisions. (We are demanding that the present system which places supervisors at the mercy of the employer be abolished since favoritism and injustices have resulted, and that a clear and explicit procedure be adopted.)

5. Refusal of the Company to make temporary adjustments in rates of pay for supervisors when they are employed at higher pay classifications during vacations, illnesses and other absences of higher paid employees whom they replace. (We are demanding that the Company make these adjustments in rates of pay.)

6. Refusal of the Company to permit the Foreman's Association of America a voice in the demotion, promotion or transfer of our members. (We are demanding that such demotion, promotion or transfer be subject to negotiation when such company action is deemed unreasonable by the members of Chapter #2, Foreman's Association of America.)

7. Refusal of the Company to negotiate with representatives of the Foreman's Association of America when adopting a company policy which is adverse to the best interests of the supervisory staff. (We are demanding that any policy which may be adverse to the welfare of the supervisory staff be subject to negotiation before being put into effect.)

Board's Exhibit No. 19

8. Refusal of the Company to negotiate and rectify all instances of rate of pay inequalities. (We are demanding that the Company meet with representatives of the Foreman's Association of America and correct these instances of rate of pay inequalities.)

9. Refusal of the Company to properly classify supervisory employees. (We are demanding that our members be properly classified as to supervisory rank and duties.)

10. Refusal of the Company to negotiate with representatives of the Foreman's Association of America the number of people and amount of territory each of our members must supervise. (We are demanding that the Company cease forcing their supervisors to accept too much responsibility.)

11. Refusal of the Company to pay a bonus for night shift work. (We are demanding that the Company pay a ten per cent (10%) bonus to all supervisors when employed on any shift which starts between twelve o'clock noon and four A. M.)

We trust you will give this matter your immediate attention and consideration and that we will receive a reply within the next ten days.

Very truly yours,

/Sgd/ MIKE QUATRO
President, Chapter #2

Approved:
ROBERT H. KEYS, National President

CC to U. S. Concilation Service
National War Labor Board
F. H. Taylor, Briggs Mfg. Co.

Wmc/lk

Many of these demands were made later upon Bohn Aluminum and Aeronautical Products.

Board's Exhibit No. 19

The issues set out in these letters together with other grievances concerning promotions, demotions, and discharges constituted the complaints which led to a series of strikes by supervisory employees between October, 1943, and May, 1944.

In Republic Steel the foremen walked out on an unauthorized strike October 8, 1943, when the Company appointed a man from another plant as foreman in the strip mill. A strike occurred in Bohn Aluminum over discharges, December 21, 1943 to January 4, 1944.

Strike notices under the War Labor Disputes Act were filed against Chrysler (October 5, 1943), Briggs (October 7, 1943) and Republic Steel, (October 14, 1943). All were withdrawn within thirty days.

During January 13-21, 1944 the foremen of Chrysler were on strike, allegedly over the demotion of a foreman. A series of strikes of supervisors occurred in other Detroit companies more or less simultaneously in May. Strikes began in Briggs April 27, 1944, and soon many supervisors in the following Companies were on strike: Hudson, May 1st; Packard, May 3rd; Murray, May 5th; Gar Wood and Aeronautical Products, May 9th. Through the efforts of the War Labor Board these strikes were all terminated May 17, 1944. On May 18th the Board passed its resolution establishing this Panel to hear the cases.

In the Baldwin Locomotive Works a different union is involved. There the supervisory employees organized in late 1943. They were chartered as Lodge 91 of the International Association of Machinists, (A. F. L.). The request of the union for negotiation being refused, the union sought recognition from the National Labor Relations Board and the petition was dismissed. The negotiation of a proposed contract was denied by the Company. A strike vote was taken on May 20, 1944 under the War Labor Disputes Act, but no strike has occurred. The union's complaints concern negotiation of an agreement, wage inequalities, bonus for night shifts, overtime pay, discharges, transfers, promotions, seniority, and grievance procedure.

Board's Exhibit No. 19

The three shipyard cases involve various classes of sub-foremen and working leaders. Many of them are members of the Industrial Union of Marine and Shipbuilding Workers of America (C. I. O.), which also represents production and maintenance employees. In the New York Shipbuilding Corporation the sub-foremen, having been denied bargaining rights by the National Labor Relations Board, sought to obtain by negotiation arbitration as a final step in the handling of grievances, pay adjustments, seniority, and vacation pay. The company refused the demands. Following a work stoppage on October 5, 1943, the parties submitted a wage and classification dispute to the Shipbuilding Commission, which has recently handed down a decision. (Case No. 111-4873-D, Nov. 11, 1944). The other issues were certified to the Board June 1, 1944 and referred to this Panel.

The temporary supervisors and working leaders of the Maryland Drydock Company, having been denied bargaining rights in the Maryland Drydock Decision of the National Labor Relations Board, on May 11, 1943, made demands upon the Company in November, 1943. Rejection of these demands by the Company led to a strike November 26 to December 1, 1943, and the case was certified to the Board January 4, 1944. The issues concern rates of pay, classification of temporary employees, vacations, sick leave, recognition, and grievance procedure terminating in arbitration.

The Federal Shipbuilding and Drydock Company case concerns the leading men who, after the union was denied bargaining rights, organized themselves in December, 1943, into a so-called Leadingmen's Organizing Committee (New York Record, August 7, p. 11) to press their demands. The Company has refused to grant the demands of the Committee, as it refused to grant the earlier demands of the Union in behalf of the leadingmen. The demands generally concern a grievance procedure terminating in arbitration, wages, hours, tenure, vacation, and sick leave. They are set forth in a proposed contract submitted to the Company June 26, 1944.

Board's Exhibit No. 19

III. The General Nature of the Action Requested by the Supervisors.

The Action requested by the supervisors before the Panel differs as between the different groups of supervisors. The disputes certified to the War Labor Board in all cases involved questions of recognition and collective bargaining. The resolution of the Board appointing the Panel excludes issues of bargaining rights. In consequence the parties have sought different forms of relief.

The Foreman's Association of America "insists that the Panel should at once recommend that the Board immediately enter an order for the prompt installation of adequate machinery for hearing and determining foremen's grievances." (F. A. A. Statement of Position, 1) It continues:

"As a concrete suggestion, we urge that the recommendation by the Panel to the Board include the minimum of a joint Committee on Grievances in each plant of each employer, consisting of not less than three (3) representatives of the employer, and three (3) representatives of the foremen, together with the appropriate building and department chairmen and committees." (F. A. A. Statement of Position, 14.)

In the Baldwin case the Union asks that the Company be ordered to negotiate with the supervisors, through the union as their representative, and reach an agreement which should be reduced to writing and signed by the parties. (Baldwin Rec. 149) This action, it argues, is within the jurisdiction of the Board, since the Union does not here ask for recognition as the sole bargaining agent. (Baldwin Rec. 150, 311) If under such an order the parties are unable to agree, it then contemplates that the Regional Board would determine the questions remaining in dispute (Baldwin Rec. 309).

In the three shipyard cases involving groups of supervisors having membership in the Industrial Union of Marine and Shipbuilding Workers of America, the groups request the establishment of certain working conditions,

rates of pay and the establishment of a grievance procedure terminating in arbitration. It frankly admits that its ultimate goal is recognition and collective bargaining, but it does not press that demand here in view of the limitations imposed on the Panel by the Board's resolution of May 18, 1944. Certain of the issues originally in the New York Shipbuilding Corporation case were submitted with the consent of both parties to the Shipbuilding Commission and have since been decided by the Commission. (Case No. 111-4873-D, Nov. 11, 1944) These issues, therefore, are not before the present Panel.

PART TWO.

THE SUPERVISORS INVOLVED IN THESE DISPUTES—THEIR DUTIES AND AUTHORITY, THEIR ORGANIZATIONS, AND THE GRIEVANCE PROCEDURE AVAILABLE TO THEM.

IV. The Duties and Authority of the Supervisors Involved in These Cases.

The supervisors involved in the cases before the Panel have different titles, different duties, and different degrees of authority. The titles of the various classes of supervisors are listed in the first section of this report. For reasons of convenience, as previously noted, the terms "foreman" and "supervisor" will be used interchangeably in this report to cover all classes of foremen and supervisors involved in the cases before the Panel.

The duties and authority of the supervisors in these cases have the following common characteristics:

1. All of the men involved in these cases are in the main or entirely supervisors of other men—that is, they do little or no mechanical work themselves, but instead spend all, or nearly all, of their time seeing that other men properly do their work.

2. All grades of supervision in these cases have the duty of recommending promotion, transfer, lay-off or dis-

cipline of rank and file employees. As a general rule, the supervisors do not have final authority to promote, transfer, lay-off, or to discipline rank and file employees. However, the recommendations of the supervisors in these matters carry great weight. The recommendations of the supervisors of some companies appear to be equivalent to a final decision, unless the union of rank and file employees appeals the case. There are, however, substantial differences in the weight carried by recommendations of different grades of supervisors before the Panel.

3. All of the supervisors in these cases are **executors** of the plans, policies, and production schedules made by higher management. They may occasionally be consulted by higher management when plans, policies, and production schedules are being made, but such consultations appear to be unusual. Hence the supervisors involved in these cases may be said to have little if anything to do with policy **making**.

The duties and authority of the supervisors in these cases have important differences. The most striking contrasts are between the duties and authority of the supervisors in the three shipyard cases on the one hand and the ten manufacturing companies on the other hand. The supervisors in the three shipyard companies are lower in the scale of management and closer to the rank and file workers than the foremen in the manufacturing companies.

The lowest grade of supervisors involved in these cases are the **temporary supervisors** in the Maryland Drydock Company. They are the first line of supervision above the rank and file workers, each generally handling groups of ten or less. (Washington Rec. 33) The temporary supervisor directs the work of mechanics and instructs. He does not impose discipline or handle grievances.

The next level of supervision are the **working leaders** found in the Maryland Drydock Company. The working leader may sometimes supervise temporary supervisors. More often he may supervise workers directly. As the title implies, a working leader may actually perform some

of the work he is supervising. Under war conditions, however, manual work by working leaders is limited to the operations which are especially difficult. Most of the time of the working leaders is spent supervising other persons. It is his responsibility to translate specifications of the job to the workers and directly to instruct the workers as to the performance of the work. It is his responsibility to see that the workers have sufficient material and supplies. The working leaders have first-hand knowledge of the workers under them and may be the only level of supervision which has this direct knowledge. (Washington Rec. 37-38) The Maryland Drydock Company says that it leans heavily on the opinion and judgment of working leaders in matters of promotions, merit increases, demotions, or terminations of workers under their supervision.

The leaders or leading men, involved in the Federal Shipbuilding and Drydock and the Maryland Drydock cases, hold a position of general supervision in a shop or on a ship. A leader usually directs the activities of several working leaders or temporary supervisors. He makes sure that the lower level of supervision understands the work that is to be done and clears up questions about the work. Leaders and leading men must give particular attention to the ordering and expediting of materials and supplies, and only on rare occasions are they required to observe the actual work of individuals. (Washington Rec. 36-37) The leading men in the Federal Shipbuilding and Drydock Company may negotiate a wage increase for an individual worker. A leading man may recommend disciplinary action, but he does not discipline men without consultation with foremen. If a warning slip is issue to a man, it is issued and signed by the foreman, but it may be handed to the worker by the leading man. (New York Rec. Aug. 7, 29)

The sub-formen involved in the New York Shipbuilding Company case are above the working leaders and leading men. A sub-foreman may have as few as five or six men under his direction and may actually spend part of the time (as in the case of welders) using the tools of his

trade. (Statement on Behalf of Sub-Foremen's group, 4) In other departments the sub-foremen may direct as many as 30 or 40 employees, and in a few cases there may be 50 or 100 in a gang. Sub-foremen are charged with seeing that the work performed by their subordinates is completed on schedule and in accordance with drawings and specifications. The sub-foremen are expected to rate the employees for skill, ability, productivity, and conduct, and may recommend promotion or discharge. (Statement on Behalf of Sub-Foremen, 4) The sub-foremen do not impose discipline or handle grievances.

The foremen in the 10 manufacturing plants are in charge of departments. A foreman may supervise 50 or 100 men or more. He is responsible for seeing that the production schedule of the department is met. This means that he plans the manpower needs of the department, requisitions the needed workers, and assigns them to jobs, and sees that they are properly instructed in their work. The foreman is also responsible for seeing that his department is properly supplied with material and that its equipment is properly maintained. He imposes discipline and acts as the first step in handling grievances brought up by the union of rank and file workers. Although there are differences in the responsibilities of the foremen in the manufacturing plants, they appear to be minor. The following job descriptions of duties of foremen may be regarded as reasonably typical for manufacturing companies. One is a job description of the Aeronautical Products, Inc. (Company Ex. 2), and the other is a summary of the supervisors' management responsibilities in the Murray Corporation (Murray Ex. 3-A). In reproducing the job description of the Murray Corporation, technical references to company manuals have been omitted.

From Aeronautical Products, Inc. (Company Ex. 2):

Job Description

Foreman—Departmental

Supervises, instructs and directs the work of a varying number of employees engaged in machining or

expediting the machining of the Company's products, and is designated for identification purposes by the department to which he is assigned.

Supervision is usually limited to one work-shift, with responsibility given the 1st (Day) Shift Foreman to so plan the flow of work that the following shifts may proceed without interruption.

In so supervising, instructing and directing the department, he performs the following specific duties: on the basis of his production schedules plans the manpower needs of the department, requisitioning needed additional or replacement workers, assigns workers to particular jobs and tasks according to their experience and ability; trains, instructs, and assists new workers; recommends transfers, promotions, demotions, merit raises and disciplinary action and discharges for cause under the specific stipulations of the C. I. O. Union contract, and is charged with the settlement of all grievances arising in his department at their source, in the first two steps of the Five-Step grievance procedure; plans and organizes the department so as to fully utilize manpower and machinery available in order to meet production schedules; confers with the Superintendent and Plant Manager recommending changes; orders necessary machinery, tools and equipment, and checks production against standards established for each job; maintains attendance and punctuality records of his employees; attends such training sessions as are scheduled from time to time to improve his technical knowledge and his skill in handling his personnel.

These Foremen utilize the knowledge and skill of the job classifications they supervise, together with the exercise of considerable independent judgment and responsibility for the products machined.

Board's Exhibit No. 19

From the Murray Corporation (Exhibit No. 3-A):

Supervisors' Management Responsibilities.

In addition to specific responsibilities assigned in Standard Practice, the following general managerial responsibilites affect all supervision:

1. Personnel.

   a. The selection of qualified applicants, training and assignment of functions of personnel under their direction.

   b. Recommending transfer, dismissal or disciplinary action of such employees.

   c. Recommending rate adjustment of employees with the exception of those employees covered by the automatic raise plan.

   d. Promotion of employees.

2. Assignment of Functions.

   The assignment of functions to each department, section and/or group under their jurisdiction and the instructing of personnel in their responsibilities and limit of authority.

3. Planning.

   a. The planning of departmental and/or section activity.

   b. The requisitioning of labor requirements to meet delivery schedules.

4. Performance.

   The actual performance of department and/or section for:

   a. Cost.

   b. Quality of product.

   c. Delivery to schedule.

5. Working Conditions.

   Company-employee relationship on:

   a. Safety.

Board's Exhibit No. 19

b. Working conditions.

c. Conservation of company property.

d. General appearance of department or section.

6. Services.

The requisitioning and securing of services from other departments for the proper performance of their own department or section. The recommending of major expenditures for the improvement of Company property.

7. Rules and Regulations.

The enforcement of company policies, rules and regulations.

8. Standard Practice.

a. Installation of Standard Practice with personnel under their direction.

b. Notification of required change or recommendation for improvement of Standard Practice.

The principal difference between the duties and authority of the supervisors in the several cases before the Panel may be summarized as follows:

1. A few of the supervisors (the temporary supervisors, working leaders, and sub-foremen) occasionally do a small amount of manual work, but most of the supervisors do no manual work.

2. The temporary supervisors and working leaders in the Maryland Drydock Company work very closely with the rank and file employees and one of their principal duties is to instruct. (New York Rec. August 7, 27, and Washington Rec. 38-39). The leaders, leading men, and foremen are less closely in touch with the rank and file. They supervise the rank and file largely by directing the work of subordinate supervisors, such as the temporary supervisors, the working leaders, and, in the case of manufacturing plants, the gang leaders or gang bosses.

Board's Exhibit No. 19

3. The supervisors in the three shipyards may recommend discipline, but are not directly responsible for imposing discipline. The foremen in the ten manufacturing companies may impose discipline, subject to appeal to the grievance machinery provided in the contract with the rank and file union.

4. The foremen in the ten cases involving manufacturing companies are the first step on the management side in handling grievances with the rank and file unions. None of the supervisors involved in the three shipbuilding cases represent management in handling grievances with the representatives of rank and file unions. In those cases the first step in grievance procedure is one or more levels higher up in the hierarchy of management.

5. The foremen in the manufacturing companies appear to give a considerable part of their attention to seeing that general conditions necessary for carrying out production schedules are met. They requisition help (subject to the approval of higher management); they check the flow of materials from other departments; they may ask for additional equipment. The temporary supervisors and working leaders, as indicated above, devote their attention more completely to supervising the actual work of rank and file workers. The leaders and leading men appear to be between the working leaders and foremen in responsibility.

6. There are important differences in the degree of responsibility and authority exercised in matters of promotion, wage increases, transfer, and lay-off, by the supervisors involved in these various cases. Although the foremen in the manufacturing plants only recommend for promotion, transfer, lay-off, or discharge (as in the Aeronautical Products Company, the Briggs Manufacturing Company, the Chrysler Corporation, the Gar Wood Industries, the Hudson Motor Car Company, the Murray Corporation, and the Packard Motor Car Company, Detroit Rec. 1099, 1823, 2067, 3616, and 3617), the recommendations of department heads pre-

sumably carry more weight and are more likely to be put into effect without question than similar recommendations made by men in charge of small gangs.

The foremen who head departments in the manufacturing plants usually participate in hiring men. They requisition men and particular individauls are not hired without the foreman's approval. His approval does not mean that a given man is hired because the candidate must meet other requirements, such as the standards of physical fitness which are required by the medical department of the company. The supervisors before the Panel from the shipyards do not participate in the hiring process, though they may indicate to their supervisors the need for additional men.

Although, as has been pointed out, the supervisors before the Panel are all primarily **executors** of policies rather than **makers** of policies, they are not distinguished from all of their superiors by this fact. In every company before the Panel there are grades of supervisors (1) who are superior in rank and authority to the supervisors involved in these disputes, and (2) who also have little to do with policy making. A division superintendent, for example, is primarily an executor rather than a maker of policies.

The local of the Foreman's Association of America in one of the Briggs plants at one time invited membership from superintendents on the ground that some of the duties of foremen had been reassigned to them. The Foreman's Association of America will take in general foremen, but will not admit superintendents. Counsel for the union in the Baldwin case stated that his organization would not object to the exclusion of superintendents and assistant superintendents from the bargaining unit of foremen (New York Rec. Oct. 10, 158), but, he expressed the belief that superintendents probably belong in the bargaining unit of foremen. He asserted that no superintendents in the Baldwin Company belonged to the union and he does not think that there are enough of them "to worry about."

The Panel sought to obtain an explanation from the representatives of supervisors concerning the underlying conditions which lead them to admit persons up to a certain point, but not beyond. The Panel was unable to obtain from the foremen any clear line of demarcation, or any definitive principle, by which they differentiated from higher management the supervisors for whom they spoke. Some of the witnesses of the Foreman's Association of America seemed to imply that the responsibilities of their foremen members are differentiated from the responsibilities of immediate superiors by the fact that the foremen have very little to do with policy making. As pointed out above, however, this distinction does not seem to hold true in most of the plants involved in these proceedings. One must go more than one rank above foremen in most plants to find officials who participate intimately in making major company policies.

V. The Foreman's Association of America—Its History, Membership Requirements, and Relations With Other Labor Organizations.

1. **History.** The first organization of foremen in the Detroit area seems to have occurred in 1938. It began in the Kelsey-Hayes Wheel Company, from which it spread to other plants. The foremen sought affiliation with the C. I. O., which at first rejected their attempts to affiliate. In December, 1938, however, the C. I. O. granted the foremen a charter. On June 20, 1939, the union won formal recognition from the Universal Cooler Corporation of Detroit. This recognition was negotiated as a supplement to the regular contract between the company and the United Automobile Workers and stated that "the company recognizes the union as the bargaining agency for its supervisory employees not eligible to become members of the United Automobile Workers." The C. I. O. foremen's union soon had 900 dues-paying members and was fairly well established in eleven plants. Another C. I. O. foremen's local conducted a strike at the Electric Auto-Lite Company

at LaCrosse, Wisconsin, and won improved wages and conditions and an informal letter of agreement.

During the 1939 strike of the United Automobile Workers at the Chrysler plants a number of foremen at the Dodge truck plant joined the C. I. O. The Chrysler Corporation discharged 48 of them. The company also demanded that the C. I. O. disband its foremen's union in the Chrysler plants and cease organizational activities there. This the C. I. O. agreed to do. The National Labor Relations Board dismissed charges of unfair labor practices filed by the dismissed foremen. The membership of the union dropped rapidly and, in February, 1940, it surrendered its charter.[1]

The organization which developed into the Foreman's Association of America began in the River Rouge Works of the Ford Motor Company in August, 1941. This was about two months after the Ford Motor Company signed a union shop contract with the United Automobile Workers in June, 1941. The Ford Motor Company had increased the number of foremen tremendously, but had given them little or no training. The scale of compensation of foremen in the Ford Company contained inconsistencies which were a source of dissatisfaction. The Ford foremen had not received wage increases comparable to those granted the rank and file workers in their contract of June, 1941. This contract provided that the seniority of production men, who were promoted to foremen, cease to accumulate on the day of promotion. Mr. Robert H. Keys, one of the leaders of the original group and now president of the Foremen's Association of America, has described the aims of the original group as follows:

> "Our original idea was to form a group in just our division of the company for the protection of our rights. We . . . had no idea that our movement would spread all through the Ford plants . . . Before we realized what was going on, our original hand-

[1] For an account of the C. I. O. Foremen's Union, see Ira B. Cross, Jr., "When Foremen Join the C. I. O.," Personnel Journal, Vol. XVIII, pp. 274-282, and 346.

> ful had increased to thousands . . . Then . . . we began getting inquiries from foremen in other large Detroit corporations."[2]

In September, 1941, with approximately 350 foremen in attendance, the name Foreman's Association of America was adopted and a committee of foremen was appointed to act as a "constitutional committee," and instructed to prepare a rough draft of a proposed constitution. On November 2, 1941, a meeting of approximately 1200 foremen adopted the constitution of the Foreman's Association of America. At this meeting officers were elected.

Activities of the Foreman's Association during 1941 were confined almost entirely to the foremen of the Ford Motor Company. A charter to foremen outside the Ford Company was not granted until February 16, 1942. This charter was granted to foremen in the Briggs Manufacturing Company. The next charter was not granted until August 27, 1942. It was given to a group of foremen in the Detroit Lubricator Company. Shortly afterward, on September 22, 1942, and on October 13, 1942, charters were granted to foremen in the Chrysler Corporation and the Packard Motor Car Company, respectively.

In the meantime some organization was going on among the foremen in various other plants. For example, in the Ecorse plant of the Murray Corporation, where the foremen had organized in 1938 but later disbanded, a petition signed by the foremen was presented to management in January, 1942. The petition requested joint consideration and decisions on matters relating to wages and working conditions. In February, 1942, a meeting was held with management at which time an agreement was reached to hold meetings once a month to consider grievances. Unresolved grievances were to be arbitrated. Meetings continued until November, 1942, at which time the foremen petitioned the National Labor Relations Board for investigation and certification in order to determine the bargain-

[2] Robert H. Keys, "Union Membership and Collective Bargaining by Foremen," **Mechanical Engineering**, LXVI (April, 1944), 251.

ing agent. At this time the organization of foremen at the Ecorse plant was not affiliated with the Foreman's Association of America.

After hearings before a trial examiner on January 7, 1943, the National Labor Relations Board, on February 24, 1943, established three units appropriate for the purposes of collective bargaining. Elections to determine bargaining agents were held on March 26, 1943. Concurrently a Company petition for reconsideration was granted and the ballots cast at the election were impounded. In May, 1943, the foremen's organization at the Ecorse plant affiliated with the Foreman's Association of America. On July 6, 1943, the National Labor Relations Board reversed its previous decision in the Murray case, found that department, shift, and section supervisors did not constitute units appropriate for collective bargaining, and dismissed the petition of the supervisors.

The Foreman's Association held its first convention in the fall of 1942. Eight chapters had delegates at the convention. Prior to the first convention, the officers originally elected at the meeting on November 2, 1942, had been acting both as officers of the Ford chapter and as national officers. After the first convention separate officers were elected for the national union and for the Ford chapter.

By the end of 1942, the Association had 10,392 members and a total of eight chapters. Growth throughout 1943 was rapid. By the end of the year, the Association had 18,963 members and a total of 68 chapters. A second convention was held in the fall of 1943. The growth of the Foreman's Association of America is shown in the following table:

	Number of Chapters	Number of Members
December 31, 1941	1	4,020
December 31, 1942	8	10,392
December 31, 1943	68	18,963
July 31, 1944	109	25,000
December 31, 1944	152	33,000

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The great bulk of the membership of the Foreman's Association of America in July, 1944, was in the Detroit area and in the automotive industry. Of the 109 chapters, regular and provisional, at the end of July, 1944, 64 were in the state of Michigan. Fifty-one of the 109 chapters, and possibly more, were in companies which, in time of peace, make principally automobiles or automotive parts. During 1944, however, the growth of the Foreman's Association showed much wider diversification with respect to both industry and area than before. Of the 42 regular and provisional charters granted between the first of January, 1944, and the end of July, 1944, 28 were outside the state of Michigan, and 26 were granted to foremen in companies which are not in the automobile or automotive parts industries. Of the 43 additional regular and provisional charters granted up to the end of 1944, 35 were outside the state of Michigan and 32 were outside the automobile and automotive parts industries.

On November 5, 1942, the Foreman's Association signed a wage and classification agreement with the Ford Motor Company establishing a standard set of classifications and rates for foremen. After the rate schedules were approved by the National War Labor Board and the Treasury, wage payments retroactive to November 5, 1942, were given to the foremen. This agreement with the Ford Company did not contain grievance procedure, and did not cover working conditions of supervisors other than wages. Nevertheless, a foremen's personnel office was established by the Ford Motor Company and many grievances were adjusted with this office through representatives of the Foreman's Association.

On October 8, 1943, the Foreman's Association signed an agreement with the Detroit Lubricator Company which recognizes the Association as the collective bargaining agent of the foremen employees of the company, but excludes a few general foremen. This agreement of recognition, however, has not been followed by a formal contract, because the cooperative attitude of the employer, the Association states, has made such a contract unnecessary.

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In February, 1943, a consent election was held among the foremen of the Packard Motor Car Company at which 486 foremen voted to designate the Association as their bargaining agent, and two voted against it. The Company challenged the vote of some 80 foremen. Subsequently it refused to negotiate an agreement.

On May 9, 1944, the Foreman's Association and the Ford Motor Company signed a comprehensive collective bargaining agreement. This agreement recognizes the Association as the collective bargaining agent for its members, establishes wage and salary classifications, and sets up grievance machinery. In July, 1944, the Foreman's Association signed its second collective bargaining agreement with the United Stove Company of Ypsilanti, Michigan.

The Foreman's Association has been involved in the following strikes:

Chapter	No.	Plants	Address	Foremen Involved	Strike Started	Strike Ended
Ford	1	Rouge	Dearborn, Mich.			
		Bomber	Ypsilanti, "			
		Highland Park	Highland Pk. "	7,500	June 19	June 21 1943
		Lincoln	Detroit "			
	1	Bomber	Ypsilanti, "	1,200	Dec. 21	Dec. 22 1943
Briggs	2	Mack Ave.	Detroit, "			
		Hamtramck	Hamtramck, "			
		8 Mile Rd.	Detroit, "			
		Milwaukee Ave.	Detroit, "	1,324	Apr. 27	May 17 1944
		Outer Drive	Detroit, "			
		Vernor Hwy.	Detroit, "			
		Meldrum Ave.	Detroit, "			
		Shoemaker Garage	Detroit, "			
		Connors Ave.	Detroit, "			
Chrysler	3	DeSoto	Detroit, "			
		Wyoming & Warren	Detroit, "			
		Dodge Main	Detroit, "			
		Dodge Mound Rd.	Detroit, "	700	Jan. 13	Jan. 21 1944
		McKinstry Ave.	Detroit, "			
		John R. Ave.	Detroit, "			
		Tank Arsenal	Detroit, "			
		Highland P.	Highland Pk. "			
Packard	5	All—Also 30,000 employees out last 5 days	Detroit, "	900	May 3	May 17 1944
Hudson	6	Detroit	Detroit, "	650	May 1	May 17 1944

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Chapter	No.	Plants	Address	Foremen Involved	Strike Started	Strike Ended
Gar Wood	7	6 Plants	Detroit, "	167	May 9	May 1[illegible] 1944
Murray	34	Main	Detroit, "	400	May 5	May 1[illegible] 1944
Murray	34	Ecorse	Ecorse, "	200	July 10	July 1[illegible] 1943
Republic Steel	43	"98" Strip Mill	Cleveland, O.	50	Oct. 7 1943	Oct. [illegible] 1943
Bohn Aluminum	66	Plant No. 24	Adrian, Mich.	28	Dec. 21 1943	Locked Out Jan. [illegible] 1944
Aeronautical Products	64	All	Detroit, Mich.	46	May 9	May 1[illegible] 1944

The following is a list of the Chapters of the Foreman's Association of America as of July 31, 1944, their location, and the date of their charter:

No.	Chapter	Location	Date Chartered
1	Ford Motor Co.	Detroit, Mich.	Jan. 4, 1942
2	Briggs Mfg. Co.	" "	Feb. 16, 1942
3	Chrysler Corp.	" "	Sept. 22, 1942
4	Detroit Lubricator Co.	" "	Aug. 27, 1942
5	Packard Motor Car Co.	" "	Oct. 13, 1942
6	Hudson Motor Car Co.	" "	Nov. 17, 1942
7	Gar Wood Industries, Inc.	" "	Nov. 24, 1942
8	U. S. Rubber Co.	" "	Dec. 20, 1942
9	Detroia Corporation	" "	Jan. 3, 1943
10	Timken Detroit Axle Co.	" "	Jan. 3, 1943
11	Kelsey-Hayes Wheel Co.	" "	Jan. 17, 1943
12	General Motors Corp. (Diesel Div.)	" "	Jan. 31, 1943
13	Detroit Edison Co.	" "	Feb. 16, 1943
14	Ford Motor Co. (Canada)	" "	Mar. 11, 1943
15	Great Lakes Steel Corp.	Detroit, Mich.	Mar. 11, 1943
16	Aluminum Co. of America	" "	Mar. 11, 1943
17	Detroit Transmission	" "	Mar. 4, 1943
18	Nash-Kelvinator	Lansing, Mich.	Mar. 11, 1943
19	Chicago Pneumatic Tool	Detroit, Mich.	Mar. 11, 1943
20	Graham Paige Motors Corp.	" "	Mar. 11, 1943
21	Nash-Kelvinator	" "	Mar. 21, 1943
22	Detroit Steel Products Co.	" "	Mar. 21, 1943
23	Bethlehem-Fairfield Shipyard	Baltimore, Md.	May 2, 1943
24	Soss Mfg. Co.	Detroit, Mich.	May 21, 1943
25	Midland Steel Products	" "	May 2, 1943
26	Studebaker Sales Corp.	South Bend, Ind.	Apr. 4, 1943
27	Wooddall Industries, Inc	Detroit, Mich.	Apr. 4, 1943
28	Pontiac Motor Division	Pontiac, Mich.	May 2, 1943
29	Frost Gear & Forge Co.	Jackson, Mich.	May 2, 1943

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No.	Chapter	Location	Date Chartered
30	Bohn Aluminum & Brass	Detroit, Mich.	May 2, 1943
31	Ternstedt Mfg. Co.	" "	(a)
32	Detroit Gray Iron Foundry Co.	" "	May 2, 1943
33	Detroit Brass & Malleable	" "	May 2, 1943
34	Murray Corp. of America	" "	May 2, 1943
35	Firestone Rubber & Metal	Wyandotte, Mich.	May 21, 1943
36	Whitehead-Kales Co.	Detroit, Mich.	May 21, 1943
37	Wolverine Tube Division	" "	May 21, 1943
38	Bendix Aviation Corp.	South Bend, Ind.	May 21, 1943
39	Youngstown Sheet & Tube	East Chicago, Ind.	May 21, 1943
40	Standard Oil Co.	Detroit, Mich.	June 7, 1943
41	Sinclair Refining Co.	East Chicago, Ind.	June 7, 1943
42	Carnegie Ill. Steel Corp. Gary Sheet & Tin	Gary, Ind.	June 11, 1943
43	Republic Steel Corp. 98" Strip Division	Cleveland, O.	July 1, 1943
44	Carnegie Ill. Steel Corp. Gary Works	Gary, Ind.	July 1, 1943
45	Chevrolet Gear & Axle & Forge	Detroit, Mich.	July 1, 1943
46	Federal Mogul Corp.	" "	July 9, 1943
47	Carnegie Ill. Steel	Farrell, Pa.	Aug. 24, 1943
48	Chevrolet Motor & Axle Div. General Motors	Buffalo, N.Y.	Aug. 24, 1943
49	Inland Steel Co.	Ind. Harbor, Ind.	Aug. 24, 1943
50	Bethlehem Steel	New York	Aug. 24, 1943
51	U. S. Rubber	Des Moines, Iowa	Aug. 24, 1943
52	United Stove	Ypsilanti, Mich.	Aug. 24, 1943
53	Olds Motor Works	Lansing, Mich.	Sept. 2, 1943
54	Simmons Co.	Elizabeth, N. J.	Oct. 4, 1943
55	Herron Zimmers Mldg. Co.	Detroit, Mich.	Oct. 4, 1943
56	Gary Screw & Bolt Div. Pittsburgh Screw & Bolt Corp.	Ind.	Oct. 4, 1943
57	American Steel Foundries	East Chicago, Ind.	Oct. 4, 1943
58	Allegheny Ludlum Steel	New York	Oct. 4, 1943
59	American Blower Corp.	Detroit, Mich.	Nov. 2, 1943
60	Fisher Body	" "	Nov. 2, 1943
61	Fruehauf Trailer	" "	Nov. 23, 1943
62	Gemmer Mfg. Co.	" "	Nov. 23, 1943
63	Willys Overland	Toledo, Ohio.	Nov. 23, 1943
64	Wyandotte Chemical	Wyandotte, Mich.	Nov. 23, 1943
65	Gen. Motors Truck & Cash	Pontiac, Mich.	Nov. 30, 1943
66	Bohn Aluminum & Brass	Adrian, Mich.	Dec. 13, 1943
67	Buhl Stamping Co.	Detroit, Mich.	Jan. 11, 1944
68	Nash-Kelvinator Corp.	Grand Rapids, Mich.	Jan. 11, 1944
69	L. A. Young Spring & Wire Corp.	Detroit, Mich.	Jan. 11, 1944
70	Airway Electric Appliance	Toledo, Ohio	Feb. 8, 1944
71	Westinghouse Elec. & Mfg. Co.	Detroit, Mich.	Feb. 8, 1944
72	Gear Grinding Machine Co.	" "	Mar. 10, 1944
73	Thermoid Co.	Trenton, N. J.	Mar. 10, 1944
74	Curtiss-Wright Co.	Columbus, Ohio	June 27, 1944
75	Spicer Mfg. Co.	Pottstown, Pa.	Apr. 14, 1944
76	Intl. Smeltg. & Refining	Tooele, Utah	Apr. 14, 1944
77	Edward G. Budd Co.	Detroit, Mich.	Apr. 14, 1944
78	Chase Bag Co.	Toledo, Ohio	Apr. 14, 1944
79	Consolidated Paper Co.	Monroe, Mich.	Apr. 14, 1944

(a) Not reported.

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No.	Chapter	Location	Date Chartered
80	Dodge Chicago Plant Div. of Chrysler Corp.	Chicago, Ill.	Apr. 14, 1944
81	Indiana & Michigan Elec.	South Bend, Ind.	Apr. 14, 1944
82	Fisher Body Corp.	Flint, Mich.	
83	Chevrolet Gray Iron Foundry	Saginaw, Mich.	May 12, 1944
84	Aeronautical Products	Detroit, Mich.	May 12, 1944
85	Pullman Standard Car Mfg.	Hammond, Ind.	May 12, 1944
86	Zenith Carburetor Corp.	Detroit, Mich.	May 12, 1944
87	Arvey Corp.	Detroit, Mich.	May 20, 1944
88	Briggs Mfg. Co.	Evansville, Ind.	May 20, 1944
89	Mich. Steel Tube Products	Detroit, Mich.	May 20, 1944
90	Wright Aeronautical Corp.	Cincinnati, Ohio	May 20, 1944
91	Packard Motor Car Co.	Toledo, Ohio	May 20, 1944
92	Pullman Standard Car Mf.	Chicago, Ill.	May 31, 1944
93	Revere Copper & Brass	Detroit, Mich.	May 31, 1944
94	Acme Steel Co.	Illinois	May 31, 1944
95	Defee Shipbuilding Co.	Bay City, Mich.	June 12, 1944
96	Allied Steel Casting Co.	Illinois	June 12, 1944
97	General Analine Works	New Jersey	June 12, 1944
98	B. F. Goodrich Co.	Akron, Ohio	June 27, 1944
99	Bell Aircraft Corp.	Buffalo, N. Y.	June 27, 1944
100	Tenn. Coal Iron & R. R.	Fairfield, Ala.	June 27, 1944
101	American Steel Foundries	Granite City, Ill.	(b)
102	White Motor Co.	Cleveland, Ohio	(b)
103	U. S. Rubber	Passaic, N. J.	(b)
104	Laboratories, Inc.	Brooklyn, N. Y.	(b)
105	Midland Steel Products	Cleveland, Ohio	(b)
106	Sparks-Withington	Jackson, Mich.	(b)
107	Wisconsin Steel Works	Chicago, Ill.	(b)
108	Spring Bumper Division Houdaille-Hershey Corp.	Chicago, Ill.	(b)
109	Harbison Walker Refractories	East Chicago, Ind.	(b)

(b) At the time the Association prepared this list, Chapters 101 to 109 inclusive had been issued provisional charters only.

2. **The membership of the Foreman's Association.** The constitution of the Foreman's Association of America adopted in November, 1941, and amended in 1943 (Association Ex. 11) contains in Article 5 the following provisions governing membership:

> Section 2. Any employee of good moral character, whose duties require the supervision of other employees, or who directs work, or who may or may not supervise other employees, and who is not a member of any other organization recognized by his employer as representing him in collective bargaining, may become a member of the Association after having been employed as a supervisory employee for a period of

not less than thirty (30) days prior to the filing of application for membership, and provided that such application to a Chapter of the Association is accompanied by a membership fee.

Section 3. No supervisory employee or individual acting as negotiator in formulating employer policy may become a member of the Foreman's Association of America.

These provisions apparently do not restrict the membership in the Association of foremen to any particular rank of supervisor. Apparently any supervisor who does not belong to any other organization recognized by his employer or who does not act as a negotiator in formulating employer policy may become a member of the Association. In one or two plants a few superintendents have joined, but there has been a little interest on the part of the Association in seeking membership among superintendents. The actual practice of the Association, however, has been to restrict membership to foremen.

3. **The relation of the Association to other labor organizations.** The Foreman's Association is not affiliated with either the C. I. O. or the American Federation of Labor. The leaders of the Foreman's Association assert their intention to remain independent of other labor organizations. The companies contend that the Foreman's Association is not now in fact independent of rank and file unions, and, if it now is independent, it cannot long remain so (Briggs Brief, 37-39; Chrysler Brief, 38-43).

The Foreman's Association of America has received some official support from the C. I. O. and from the U. A. W. The Michigan State C. I. O. Council at a meeting on June 29, 1943, passed and published a resolution which provided in part:

"Resolved: That this Convention of the Michigan State CIO Council go on record supporting the fight of the Foremen to establish collective bargaining rights and other rights guaranteed by the Wagner Act, and be it further

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"Resolved: That copies of this resolution be sent to the Smith Committee, President R. J. Thomas, President Philip Murray and the Foreman's Association of America."

Mr. R. J. Thomas, the President of the U. A. W., was quoted in the Detroit News of May 5, 1944, to the effect that the U. A. W. would not permit its members to take the places of striking foremen. An article in support of the Foreman's Association of America appeared in the "Victory News," an official publication of the U. A. W., C. I. O., at the Dodge Chicago plant of the Chrysler Corporation. The record contains (Briggs Ex. 21) what purports to be an issue of "On Guard," a mimeographed sheet issued by the Educational Committee of Local Union 212, U. A. W., the chief stewards and stewards. This issue plainly indicates sympathy and support for the Foreman's Association of America, but its authenticity is disputed.

The official journals of the various C. I. O. unions have quite generally refrained from commenting upon the activities of the Foreman's Association. The record contains no evidence of support to the Foreman's Association by leaders or organizations within the C. I. O., although some support was given by individuals. The chief steward in one of the Briggs plants marched in the picket line of the foremen on May 16, 1944 (Detroit Rec. 2208). During the foremen's strike the employees in many departments made little effort to work, in some cases the rank and file booed the foremen who remained at work and caused some of them to leave their jobs (Detroit Rec. 2211). It should be noted, however, that the chief steward who marched in the picket line of the foremen was disciplined by a two week layoff. Furthermore, the United Automobile Workers sent an officer to the Conner plant of the Briggs Manufacturing Company where some members of the local union were aggressive in support of the foremen. At a meeting of representatives of management with the national representative and with the president and vice-president of the local, the representatives of the United Automobile Workers promised that they would do what they could to cor-

rect the conduct of their members. Mr. Taylor, a witness for the Company, testified that the union leaders made some attempt and that conditions did improve (Detroit Rec. 2209).

The support given to the Foreman's Association by the United Automobile Workers has been notably weak and scattered. From its policies and action there is little to suggest that the United Automobile Workers are keenly interested in encouraging the organization of foremen. Whether the United Automobile Workers would be able to take over the Foreman's Association, or to dominate it without taking it over, is a matter of conjecture. The result of any such attempt would necessarily depend partly upon whether the foremen wished to remain independent or preferred to affiliate with the United Automobile Workers. In the event that the foremen wished to remain independent, the result would depend partly upon how vigorously the foremen fought to maintain their independence and how staunchly they were supported by the employers. The Foreman's Association has chapters in many plants in which the rank and file workers do not belong to the U. A. W. Counsel for the Chrysler Corporation called attention to the fact that the U. A. W. has disavowed any intention of absorbing the Foreman's Association at this time (Company Brief, 41).

VI. Other Organizations of Foremen Involved In These Disputes and Their Relations With Rank and File Unions.

1. The Baldwin Locomotive Works. In the Eddystone plant of the Baldwin Locomotive Works the foremen organized in 1943 and were chartered in December, 1943, as Lodge 91 of the International Association of Machinists, which is affiliated with the American Federation of Labor. This union admits foremen, but the vast majority of the members of the union throughout the nation are non-supervisory workers. Another local of the machinists' union is the bargaining agent for the rank and file workers in another plant of the Baldwin Locomotive

Works and has a contract with the Company. In the Eddystone plant, however, the membership of Lodge 91 is confined to supervisors. The rank and file are represented by the United Steelworkers of America, Local Union No. 2844, an affiliate of the C. I. O.

2. **Federal Shipbuilding and Drydock Company.** The supervisory employees in The Federal Shipbuilding and Drydock Company involved in these proceedings formed the "Leadingmen's Organizing Committee" so-called, in December, 1943. (Statement on Behalf of Leadingmen's Organizing Committee, 5). A majority of the leadingmen employed in the two shipyards of the Company are, according to this Statement, members of Local 16 of the Industrial Union of Marine and Shipbuilding Workers of America. The leadingmen originally sought to deal with the Company through Local 16 as their representative. The Leadingmen's Organizing Committee was formed after the Company's refusal to deal with Local 16 as representative of the leadingmen. The Leadingmen's Organizing Committee states that it has recruited a membership of 1281 of the leadingmen at the Kearny yard and 632 of the leadingmen at the Port Newark yard, or a total of 1913 leadingmen out of approximately 2200 employed by the Company.

The Statement of the Committee describes its organization and operation as follows (p. 5):

> "The Organizing Committee operates in very much the same manner as to the subordinate organizations of the local Union. Each of these subordinate organizations consists of the maintenance and production workers of one of the departments in the Company's yards, and has a committee of three officials and two alternates, which act as the "shop committee" for the purpose of presenting grievances of the Union's members in that particular department of the Company's yard and for the purpose of maintaining liaison between the Union and its members in that department. The Leadingmen's Organization, however, differs from the other subordinate organizations of the local Union

in that it consists of all the leadingmen irrespective of the department in which they work. Presently, its relationship with the Union is not too definitely defined by reason of the Company's refusal to recognize the Union as representative of the leadingmen."

Counsel for the Leadingmen's Committee, who is also counsel for the Industrial Union of Marine and Shipbuilding Workers, stated at the hearing that the ultimate goal of the leadingmen is to obtain recognition of the Industrial Union of Marine and Shipbuilding Workers of America as the exclusive representative of the leadingmen for the purpose of collective bargaining. (New York Rec. Aug. 7, 10.) In these proceedings, however, the leadingmen do not seek recognition of Local 16 as their representative.

3. **The Maryland Drydock Company.** In the Maryland Drydock Company the organization of supervisors consists of two committees—one a Committee of Seven, described by Mr. Goldstein, the counsel for the supervisors, as "the Committee which makes and presents matters to management". (Washington Rec. 66.) The other is an advisory committee. It consists of 21 members (Washington Rec. 67). The Committee of Seven is not selected by the committee of 21. All of the supervisors, according to Mr. Goldstein, meet once a month on the last Tuesday of the month. (Washington Rec. 68.) The negotiating Committee of Seven was selected by all of the supervisors. (Washington Rec. 68.)

A majority of the supervisors involved in the Maryland Drydock Company proceedings are members of Local 31 of the Industrial Union of Marine and Shipbuilding Workers of America. (Washington Rec. 388.) Local 31, according to Mr. Goldstein, originally sought to represent the supervisory employees of the Maryland Drydock Company. (Washington Rec. 387.) In response to a question of when that time ended Mr. Goldstein said (Washington Rec. 387): "It has not ended and it will never end until we are told either by Congress or by the Supreme Court of the United States, that the National Labor Relations

Board is, beyond peradventure, right." The meetings of the supervisors are held in the office of Local 31. Mr. Goldstein, who represents the supervisors in the Maryland Drydock Company, is also general counsel for the Industrial Union of Marine and Shipbuilding Workers of America and testified that Local 31 will pay his fees for the time spent by him in this proceeding. (Washington Rec. 403.)

All members of the negotiating Committee of Seven are members of Local 31. (Washington Rec. 68.) Mr. Victor Mastropieri, chairman of the negotiating committee, estimates that about half of the members of the committee of 21 are not members of Local 31. (Washington Rec. 68.) The supervisors as a going organization are not part of Local 31 and do not constitute a subdivision of it. (Washington Rec. 389.)

4. **New York Shipbuilding Corporation.** All or virtually all, of the sub-foremen in the New York Shipbuilding Corporation are members of Local No. 1 of the Industrial Union of Marine and Shipbuilding Workers of America which represents the production workers (Statement on Behalf of the Sub-Foremen, 6). The Statement says (p 6):

> "The sub-foremen are eligible to office in the local Union and since, among the ranks of the sub-foremen, are to be found those old employees who originally organized the Union, and who have been promoted to their present positions solely because of the war, many of the sub-foremen are very active in the affairs of the Union, and some of them hold office and membership on the Union's committees."

The sub-foremen are all members of a single subordinate organization within the local created by the Union solely for their benefit. Like other subordinate organizations of the local union, the sub-foremen have a committee consisting of three officers and two alternates.

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VII. Procedures Available to Supervisors For the Settlement of Grievances In the Plants Involved In These Disputes.

In most of the plants involved in these proceedings no special procedure or machinery exists by which foremen or other supervisors may take up their grievances with higher management. A foreman is expected to discuss any grievance either with his immediate superior or with the appropriate officer of the company. If he fails to obtain satisfaction he may, if he desires, carry the case higher. The companies have maintained emphatically that the doors of the highest executives are open to any foreman who wishes to make an appeal.

Representatives of several companies testified that a foreman who is not able effectively to state his own case is not fit to be a foreman. This point of view is well stated by Mr. Byron C. Gould, vice president of the Murray Corporation, as follows (Detroit Rec. 1217).

> "We are not willing to bargain collectively with our supervisors through an Association or otherwise. Nor are we willing to talk over supervisors' grievances with anyone but the man who claims the grievance. If a supervisor lacks the ability to handle his own affairs in his dealings with his superiors in Management, then he lacks the qualities which will make him a good supervisor for the Company. A good supervisor must know how to speak for himself. It has been said that when a wife speaks to her husband through a representative, the marriage is over. We believe the same is true of Management."

Mr. Robert Conder, director of labor relations of the Chrysler Corporation, testified (Detroit Rec. 1886) that he does not believe that it is at all necessary for foremen to deal with the Corporation through representatives because foremen should be able to speak for themselves. He said:

> "We expect foremen to be articulate; they have to be in carrying out their jobs. They really aren't the

kind of people we want for foremen unless they have the ability to speak for themselves and state what their complaints are, if any, and why they think they should be adjusted. Foremen have that opportunity in our plants."

The same point of view was expressed by Mr. Fay B. Taylor, personnel director of the Briggs Manufacturing Company, who said (Detroit Rec. 2240):

"We believe that every supervisor is very well capable of stating his own position and his own desires, and if for any reason he is not, then we have made a mistake in his promotion. He is amply qualified; he must be able to do so in order to perform his functions and bargain as he has to daily and hourly with the employees whom he supervises."

Mr. Clinton W. Wood, vice president of the Gar Wood Industries, Inc., disagreed with the view that every foreman can be depended upon to speak for himself. Mr. Wood said (Detroit Rec. 3695):

"Now, I don't say that industry is clean, that we are clean, that we have handled every problem satisfactorily, that there shouldn't be some straightening out within our own organization and take care of any apparent problems that come up in a right manner; maybe we have got some foremen that are timid about coming and speaking about some of the things that they want to talk to us about. Now those things are apparent. I mean those things are apparent to us, and I think that we cannot use the argument, 'Well, if the foreman hasn't got enough initative on his own to come in and talk to the superintendent about the problem he shouldn't be a foreman.' I don't think that is the answer myself. I think there is a certain type of man who hesitates to talk about his wages. We propose, in fact, we have the thing in effect now, to evaluate the job, taking the foreman and explaining to him how it is evaluated, give him his rate and say, 'All right; now you see the en-

tire picture. Is it going to be satisfactory? Does your job compare with this job satisfactorily?' and go into the thing from that angle, and I think when we get through with it we shouldn't have too much gripe."

Although Mr. Gould, vice president of the Murray Corporation, testified that a properly qualified foreman should be able to handle his own grievances, the Corporation has established a supervisory counsellor in the industrial relations division. This officer has the special responsibility to deal with the personnel problems of foremen. If a supervisor has a grievance, he may talk with his immediate superior about it. If he does not wish to consult his immediate superior, believing that this might affect his relations with his immediate superior, he may consult the supervisory counsellor. If the supervisory counsellor believes that the supervisor does not have a real problem, he is expected to discuss the matter thoroughly with the supervisor in an attempt to interpret company policies to the supervisor. On the other hand, if he believes that the supervisor has a real problem, it is the duty of the supervisory counsellor to seek to settle it. The supervisory counsellor has no authority, but he may recommend remedial action either to the industrial relations manager or to top management. (Detroit Rec. 1189-1193, 1231-1237.) Both the management and the Foreman's Association of America agree that few foremen have taken grievances to the supervisor counsellor.

If two or more foremen have the same grievance, the managements of some companies are willing to see the foremen together. Some managements, however, will not discuss grievances with representatives of the aggrieved foremen when the representative himself does not have the same grievance. This is the position of the Baldwin Locomotive Works. Mr. W. H. Holcomb, vice president in charge of industrial relations, testified (Philadelphia Rec. 318):

Q. Mr. Holcomb, would the Company have any objection to meeting a group—I say a reasonably sized

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group—of supervisory employees with respect to a grievance that affected all the members of the group?

A. Oh, no. No, we would. That would be perfectly reasonable.

Q. As I understand your statement, what you object to is to meeting a group of supervisory employees who are attempting to handle a grievance that does not affect them personally, for some other person?

A. That is correct.

Mr. Clinton W. Wood, vice president of the Gar Wood Industries, Inc., indicated that he was willing to discuss grievances with groups of foremen or committees of foremen, but it is not clear whether he would restrict the discussion to grievances to which the members of the committee were parties. Mr. Wood testified (Detroit Rec. 3662) that he told a group of his foremen who were planning to join the Foreman's Association: "Now, if you want a group of your own without an outside organization go ahead . . ."

He further testified that on the afternoon on which the strike occurred he received a committee of his foremen. He testified that he said to the leader, Mr. MacIntosh (Detroit Rec. 3663): "Mac, if you want to, get a committee of three foremen. Maybe some of these men are afraid to talk with me and Allison alone. Maybe we can discuss it with two or three men, if that is the way you want it."

Other companies, the Hudson Motor Car Company, the Maryland Drydock Company, and the New York Shipbuilding Corporation, are willing to meet committees of foremen on grievances which may not be personal to the members of the committee. Mr. Hornett, a witness for the foremen at the Hudson Motor Car Company, testified that a committee of three, one from each of the company's plants, has met with management representatives "time and again on cases of men who are timid or on cases where the men felt that they should not battle their own cases" (Detroit Rec. 456). Asked, "What have you got to say about that situation?" Mr. Robert Waldron, director of

industrial relations, testified as follows (Detroit Rec. 3541, 3542):

A. "Well, it is true we have met with a committee of three, one from each plant, but in the past, grievances have been handled on an individual basis and we felt at that particular time that if more than one had a common grievance we would listen to them, and we did. We didn't bargain. We didn't recognize the Association."

Q. "Well, you are still, are you not, willing if more than one foreman has got a grievance, if they want to come in you are willing to have them come in and listen to them?"

A. "Yes, sir."

Chairman Slichter: "You do not regard that as collective bargaining?"

The Witness: "No, I don't. I regard it as a matter of listening to their suggestions. I hope they have some suggestions sometimes. They do occasionally—complaints."

Q. (By Mr. Meder) "When this committee of three came in, that committee of three was a committee of the F. A. A., was it not?"

A. "Well, I didn't consider it as F. A. A."

Q. "You learned afterwards it was?"

A. "Yes. Most of the foremen apparently are members of the F. A. A. out there."

The witness went on to distinguish between talking with the committee about grievances which a number of foremen may have in common and collective bargaining. He said that the management was opposed to collective bargaining. The chairman of the Panel then asked (Detroit Rec. 3543): "But talking over grievances with a committee of your own men you are willing to do?"

The Witness: "Yes, we are, we are willing to listen to them."

The Maryland Drydock Company, since December, 1943, has received a committee of supervisors to hear the pres-

entation of grievances when meetings have been requested by the committee. Mr. Goldstein, counsel for the supervisors, stated (Washington Rec. 80):

> ". . . since December of last year there has been relatively no difficulty whatever in the representatives of the supervisors obtaining access to the then vice president in charge of labor relations, Mr. W. Purnell Hull, and in more recent months to Mr. David Ruml, who is assistant to the president and, I believe, now in charge of labor relations. They have been received whenever they have asked for an appointment as a representative group. That has not, however, been true always."

The supervisors have been represented by a committee of seven. Minutes of the meetings have not been kept, but the Company prepared for its own use memoranda of the principal matters discussed. A meeting between a committee of supervisors and representatives of management occurred on July 14, 1943 (Washington Rec. 127). Subsequent meetings were held on November 4, 1943; November 29, 1943; December 22, 1943; March 15, 1944; March 27, 1944; April 15, 1944; June 12, 1944; and June 24, 1944 (Washington Rec. 127, 128). Mr. R. Douglas Dauterich, industrial relations representative, stated (Washington Rec. 100, 101) that the management does "not feel that there is any need for any formalized grievance procedure as between our supervisory forces and the top management of the company." He added (Washington Rec. 101-102):

> "We have held those meetings as much as a symbol of the fact that we are reachable as for anything else. We have not, as I said before, entertained this group as the representatives of the supervisory force as a whole. We have not felt any particular obligation to report back to them. We have been courteous to them. We have listened to what they have had to say. We have taken it under advisement.
>
> "In cases we have actually taken some action from management's point of view upon the basis of the

suggestions that they have made, but we do not recognize them as representatives of the supervisory group. And, unless we are ordered to do so, we do not propose to recognize them as representatives of the supervisory group. But we will entertain them at any time that they wish to come in."

In July, 1943, the New York Shipbuilding Corporation, agreed to the following policy which was embodied in a statement signed H. E. Parker, industrial relations manager, and given to the representatives of the subforemen:

"Management's Policy Concerning Sub-Foremen."

"The Corporation will recognize a committee of not to exceed three Sub-foremen as a Grievance Committee providing such Committee is elected by the Subforemen for such purpose.

"Any dispute, complaint or grievance of any Subforeman shall be referred by the Sub-foreman concerned to the Department Head, and any Sub-foreman may be accompanied by one or two members of the Grievance Committee, if he so desires. If the dispute cannot be adjusted by the Department Head, the complaint in the same manner may be presented to the Industrial Relations Manager or direct to the General Manager."

The Sub-foremen acknowledge that the Company has faithfully carried out its commitment.

PART THREE.

THE STATUS AND PRESENT SITUATION OF FOREMEN IN AMERICAN INDUSTRY.

VIII. The Changing Position of Foremen in American Industry.

The last four or five decades have brought important changes in the authority and responsibilities of foremen and in their position in management. These changes have been the subject of many discussions at business confer-

ences and have produced an extensive literature in business publications. The Panel does not presume to make findings concerning the extent to which these long-term and general tendencies have affected conditions in the plants involved in the cases before it or how they have affected the attitudes of the foremen and other supervisors involved in these cases. The Panel, however, is deeply impressed by what seems to be a conspicuous disproportion between the number and seriousness of the individual complaints of foremen put into the record on the one hand and by the evident interest of foremen in organization on the other. It believes that the state of mind of the foremen can be properly understood only in the light of the position of foremen in American industry. Four conditions of great importance seem to stand out:

1. long-term changes in the responsibility and authority of foremen

2. the uncertainty of the foremen concerning their terms of employment and their lack of participation in formulating those terms—in ever sharpening contrast with the opposite trends in the case of the rank and file workers

3. the lag in the adjustment of the compensation of foremen which occurred early in the war

4. the insecurity of the position of individual foremen resulting from the great temporary expansion in the number of foremen in many more plants as a result of the war.

1. **Long-term changes in the responsibilities and authority of foremen.** For a long time the responsibilities and authority of foremen have been undergoing a slow change. Time was when the foremen in many plants were independent contractors. They operated only under the loosest type of production schedule. They hired their own men at rates of pay which the foremen-contractors themselves set. Even when the foreman was not an independent contractor, he operated under very loose produc-

tion schedules. Furthermore, he was allowed considerable latitude in setting the rates of pay at which he hired men and in making changes in both day rates and piece rates. His authority to grant individual increases in compensation was often ill-defined, but it was rarely questioned. Even greater was the foreman's authority over hiring, promotion, demotion, discharge, discipline and his authority to make transfers within his department, to assign overtime, and to permit men to take time off. The foreman did his own hiring. He decided whom to promote or whom to demote, and he discharged and imposed other discipline at will. The doors of plant managers and presidents were in theory open to anyone who wished to complain about the action of foremen, but the open door was rarely entered. In any event it was up to the aggrieved workman to make his complaint to the higher management. The foreman might be overruled, but in his dealings with individual workmen he usually acted on his own responsibility and he did not have to obtain the approval of a superior before putting his decision into effect.

The independence of foremen was undermined first by the technical and economic requirements of modern methods of production. As manufacturing operations were broken down and placed in specialized departments, the coordination of production among departments became essential. Departmentalized production without well-timed and coordinated production schedules became increasingly serious as idle machines and idle men became more costly. Production under such conditions became intolerable when moving assembly lines were introduced. The routing and scheduling of production in each department so as to obtain the desired overall coordination necessarily deprives departmental foremen of some of their independence and authority to run their own departments. Then some found too that they were held to higher standards of perfection in their output, especially in assembly operations, where the parts had to fit together in the final assembly. These more exacting standards, which the process required, produced important modifications in the duties of foremen. For mass production industries, where

the changes here described have been most marked, it is no exaggeration to say that the function of the foremen has changed fundamentally in the last thirty years. Whereas he was formerly an executive with considerable freedom of action, he is now an executor carrying out orders, plans, and policies determined above.

The independence which foremen retained over personnel was not long to endure. The latitude permitted foremen in fixing the compensation of individual workmen and in setting or changing piece rates naturally produced inequalities in the earnings of workmen of comparable skill in different departments. Likewise, the freedom of foremen to act on their own responsibility in hiring, promoting, or demoting workmen, in assigning work, in making lay offs, and in administering discipline produced diversities in labor policies. It was inevitable that management must sooner or later establish central controls over wages, central machinery for setting standards of production and piece rates, central machinery for hiring, uniform policies to govern promotion, demotions, sick leave and sick pay, layoffs, and central review of discipline. Indeed, centralization of policy-making and the development of central controls over the execution of policies have been among the most important trends in the evolution of management during the last forty or fifty years.

Centralization of control over production seems generally to have occurred earlier than centralization of control over wage and labor policies.

Although the ultimate centralization of control over production, wages, and labor policies was inevitable, three principal events have been important in accelerating this development. These were: (1) the first World War; (2) the depression of the nineteen thirties; and (3) the rapid rise of trade unions.

The first World War greatly increased the importance of labor problems. Numerous labor shortages developed and properly qualified men became difficult to find. Labor

turnover skyrocketed and was quite commonly 200 or 300 per cent of the average work force.

Frequently adjustments in wage rates were necessary to meet the rapidly rising cost of living. Trade union membership in the United States doubled between 1916 and 1920. The first move of managements to meet these problems was the establishment of a central employment department through which men were hired or at least selected for reference to foremen who requisitioned help. Manageme soon discovered, however, that a central employment department was not enough. Specialized personnel departments were established to help higher managements institute company-wide wage and personnel policies. This change meant (1) that the discretion of foremen was narrowed, and (2) that foremen were held to higher standards of performance in dealing with men. For example, although foremen were permitted to discharge from their departments, discharge from the company was made subject, in many cases, to the approval of the superior of the foremen or of the personnel department. Men resigning were given a separation interview in the personnel department before receiving the final installment of their pay. In this way some effort was made to check up on the handling of men by foremen. Some companies instituted shop committees to which aggrieved employees might take their complaints—an additional control upon foremen.

The large layoffs required by the depression of the thirties stimulated the establishment of central layoff policies. Section 7A of the National Recovery Act led to the widespread formation of employee representation plans under which actions of foremen in discipline cases and other actions complained of by employees were subject to review.

Of great importance in affecting the status of foremen was the rapid rise of trade unionism, stimulated first by the National Industrial Recovery Act and later by the Wagner Act. Most managements had been strongly opposed to the spread of unionism, and most foremen had

reflected the opposition of higher management. When unions won elections, were certified as bargaining agents, and negotiated trade agreements with business enterprises, a large part of the responsibility of dealing with newly recognized unions and of making trade agreements work fell upon the foremen. In some instances recognition of the union, even though required by law, led the foremen to feel that they had been deserted by higher management. It frequently happened that, during the first year or two under contract with a rank and file union, foremen received little help from higher management in administering the agreement. Sometimes higher management neglected to give foremen copies of the agreement negotiated with the rank and file unions. On occasion a foreman had to obtain a copy of the agreement from a shop steward in his department. Likewise, many managements were slow in developing arrangements for communicating to foremen interpretations of the agreement made by higher management or agreed to by higher management and the union in settling specific grievances. Virtually all agreements provide that the first step in adjusting grievances is for the aggrieved worker or the shop steward or both to take up the matter with the foremen of the department. Instances in which this first step were skipped were by no means infrequent. Overzealous shop stewards in some cases challenged the authority of foremen to run their departments. Some higher managements were prompt and vigorous in backing the foreman; others left him to work out his problems for himself. When renewals of agreements were negotiated, sometimes the foremen had changes explained to them and sometimes they did not. In some companies foremen were promptly given careful instructions in handling grievances; in other companies, they were not. Great progress has been made in the last few years by managements in correcting the above administrative shortcomings. An appraisal of business literature and of the reports of discussions in conferences on labor relations leaves no doubt that there was a time when these administrative deficiencies were fairly prevalent.

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These long-term trends in the foremen's responsibilities and authority may be summarized as:

(1) a drop in the foreman's authority

(2) a drop in the foreman's responsibility for making policies

(3) a rise in the foreman's responsibility for executing policies.

These trends do not mean that the foreman's job is becoming less exacting or that it can be filled by less competent people. On the contrary, the need for able men in the posts of foremen seems to be growing. The foreman may be given more and more ready-made policies to execute, more and more standard practices to observe in executing them, and more and more help from a variety of service departments, but he is also held to higher and higher standards in meeting production schedules, in maintaining standards of quality, and in dealing with personnel. Furthermore, higher management cannot escape dependence upon the foreman's knowledge of men and conditions and upon the wisdom and fairness of the foreman's judgment. On many matters the foreman may only recommend action, but his recommendations must usually be accepted by superiors who know too little about the circumstances of specific cases to reject the foreman's recommendation. Hence no matter how well conceived the company's production and labor policies may be at the top, they are in fact no better than they become at the hands of the foremen who execute them.

Despite the exacting nature of the foreman's responsibilities, a large proportion of foremen sincerely do not regard themselves as part of management. This is a natural result of the growth of central management and the development of foremen into executors of policies and recommenders of action rather than makers of decisions. The foreman is not ordinarily consulted when the policies that he must execute are formulated, or when the standards that he must observe are drawn up. He often receives his instructions without explanation. Many com-

panies, it is true, have foremen's meetings at which the foremen may ask questions concerning their responsibilities and their problems. Too frequently, however, these meetings are occasions on which foremen hear from their superiors, not their superiors from the foremen. The foreman is more managed than managing, more and more an executor of other men's decisions and less and less a maker of decisions himself.

The best way to document these observations is through excerpts from articles in business journals and from talks at business conferences which all originated before any of the cases before the Panel arose.

"Industry's Forgotten Man" by Norman G. Shidle and Leslie Peat in **Forbes**, May 15, 1940, p. 14.

"Causes underlying the problem are not hard to find. Fast-spreading unionization has brought production employees radically increased wages, collective bargaining as a right, and official grievance procedures which insure the individual a hearing without fear of losing his job. But to foremen, in many cases it has brought lessened prestige (as union representatives dealt directly with high management representatives), decreased authority, increased personnel difficulties, and far less in pay advances than has gone to the men working under them.

Hard Facts to Swallow.

"These changes came right on the heels of depression-born revisions in the status of foremen and assistant foremen which had already been unpleasant to swallow. Even before the collective bargaining procedures of recent years, management itself had modified the absolute monarchism of its lowest rank supervisors by intensified activities of personnel and employment departments. When the depression came along, many foremen and assistant foremen went from the weekly to the hourly payroll. They were laid off on the same basis as production men.

"Later when the pay of production workers began to skyrocket, the pay of foremen failed to keep pace. And

more than a few foremen have been wounded in dignity and spirit, as well as in pocketbook, by the increasing intensity of management's attention to the production worker; and the resulting, even though unintentional, lessing of concentration on the status and functioning of the foremen as a management representative."

"When Foremen Joined the C. I. O." by Ira B. Cross, Jr. (Graduate School of Business Administration, Harvard University), in **Personnel Journal** (published by Personnel Research Federation), February, 1940, p. 277.

"All in all, the foremen were becoming the 'Forgotten Men' of industry. They no longer controlled the employment of the men who worked under them; even if they did recommend the discharge of an incompetent worker, the union usually could get him reinstated; they no longer had a say in the setting of production standards; they were the goats when the employer had to conserve his working capital; their hours of work were sometimes long and irregular; they had no capital; their hours of work were sometimes long and irregular; they had no assured job protection or seniority. In general, they were getting pretty well kicked around by both sides."

"Union for Foremen?" by Frank Rising (former Labor Editor, **Business Week**) in **Personnel**, February, 1940, pp. 94-95.

"From foremen themselves, and from some business executives who are very anxious to promote more harmony, we can get some of the complaints:

1. The foreman quite often feels that he is of little importance—just another guy in the shop. True, management praises him constantly as 'the key man,' gives him tracts to read, talks about him in flowing terms at foremen's club meetings, shows him movies about how to be a real leader. But it changes policy without consulting him, gives him rules to follow and then sometimes fails to back him up in a tough labor relations spot, doesn't ask for and doesn't want his advice.

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2. The foreman has to live. He has a wife and family, he wants his cut. During the rush of workers into unions some wages have gone up 20 per cent to 30 per cent. Has the foreman's compensation kept pace? It has not, at least not with any regularity. He is 'caught in the middle' between two great bargaining forces and often feels that he is losing out by being an indiyidualist. (Incidentally, this is the basis for white collar organization, too.)

3. The foreman is quite often only a temporary gang boss. In some shops which have large seasonal production bumps, a man can be a foreman for awhile, and then return to the bench. He's a member of the gang at heart and by training and even may be a member of the union already. Who can reasonably expect him to shift back and forth from one side to another of a management-labor fence?

4. The foreman actually **is** an employee, and entitled to come before the Labor Board in that capacity. At least, he is an employee in the same sense that the president of the company is, and the law doesn't define the term. Then, if others are entitled to take action to get job security and wage preferment for theirselves, why isn't he?"

"Who Gets Foremen?", **Business Week**, December 16, 1939, p. 37.

"In the Middle," Says Foreman.

"The foreman himself argues that the Wagner Act guarantees all employees the right to organize and bargain collectively, and that he is an employee. Furthermore, the foreman has some complaints. He is "caught in the middle" between organized labor and organized management, and feels that he is losing out in the resharing of profits which come from labor agreements. In some places union labor has advanced its wages 10% to 30%, while the foreman has been lost sight of.

"Again, the foreman argues that management **says** he is the savior of the shop, but doesn't back him up. Often the foreman is told to stick to a certain policy in bargaining with union committeemen on grievances, then sees

management bow to the labor organization after the latter gets tough and strikes. Result: The foreman has lost most of his prestige in the shop, and a good deal of his faith in management's word."

"Foreman Compensation," National Industrial Conference Board, Studies in Personnel Policy, No. 20, February 14, 1941, p. 1.

Introduction:

"At present the problem of securing exemption of foremen under the Act seems to be overshadowed by the ever-growing problem of maintaining a fair differential between the foremen's income and that of the workers they direct."

Proceedings of the Fifth Personnel Institute, College of Commerce Conference Series, Ohio State University Publications, Number C-23, p. 12, May 12, 1943.

"Mr. W. E. Shurtleff (Apex Electric Mfg. Co., Cleveland, Ohio): I wonder what various firms have done that have foremen on salaries based on a 40-hour week and now are required to work, say a 60-hour week? To the workers, this constitutes a 33 per cent increase, but due to the salary freeze, foremen have not been able to get adjustments. As a result, the men are making more than the foremen, and the foremen in a lot of cases want to be demoted to machine operators, or are beginning to kick because they can't get into the union. It is quit a disturbing situation in a lot of plants, and one that will have to be solved."

"What is Management's Responsibility to Foremen?" by L. Clayton Hill (at that time Vice President of Manufacturing, The Murray Corporation of America, Detroit, Michigan) in **Supervision**, August, 1940, p. 9.

". . . Let us examine some of the conditions which influence the loyalty of the foremen.

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"Particularly during the last three or four years, management has dealt directly with labor representatives in collective bargaining activities and has thus short-circuited the foremen. Too frequently the management does not keep the foremen advised of policies being discussed with union representatives. Practically no information is given the foremen regarding the progress of the discussions. Even when the policies and agreements are determined by collective bargaining, these are not always explained to the foremen. Quite often they get all their information from the union representative first. This certainly does not build a strong management foremen relationship."

Needs Courage.

"**Short-circuiting of the foremen may result from any one of several conditions.** Possibly it is because he does not know how to handle grievances. He prefers to pass the buck to the Industrial Relations Department because he lacks the courage to handle grievances himself. Maybe the company lacks confidence in him and encourages him not to play with fire. Or, in many instances, the policy involved is one requiring top management's decision. Only in the last instance is short-circuiting unavoidable."

"The Foreman's Place in an Employee Educational Program" by L. A. Appley—"The Role of the Supervisor in Labor Relations" by T. G. Graham, A. B. Gates, and L. A. Appley, American Management Association, in **Personnel Series**, Number 33, 1938, pp. 27-28.

"Specialization and functionalization had been developing over a period of years, but with the depression came the opportunity for tremendous emphasis. Specialists suddenly sprang into being. Special surveys were conducted, and in each case the center of attack seemed to be the foreman or the supervisor—simply because he was in a position where all the activities of the organization were coordinated for the workers, and because through him final instructions were conveyed to the workers.

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"Such specialization began to focus its attention upon the individual activities for which the foreman was responsible. The magnifying glass was directed on his methods of selection, his planning, his coordinating, his costs, his handling of materials, his stores, his direction of employees, etc. Naturally, with individual devoting full time to the consideration of specific features of the foreman's work, weaknesses were found. Any one of the specialists could have performed the particular activity which he was studying better than the foreman, but in some cases consideration was not given to the multiplicity of the foreman's functions. Therefore, the reaction began to develop that these things had to be done for the foreman, and one by one his responsibilities were slowly taken away from him."

Foreman's Loss of Prestige.

"As a result there were many instances where the foreman became nothing more or less than an inspector. He lost prestige, influence, and authority. If that were the case, then does it not seem perfectly natural that when the labor crisis came the foreman was looked upon as an insignificant part in the picture? In the development of improved labor conditions over the past few years the tendency has been to appoint special representatives of the workers for direct dealing with top management—despite the fact that the foreman has the closest contact with the workers and is both their representative and the representative of management."

"The Foreman and the Union" by Don D. Lescohier, **Personnel**, August, 1938, p. 19.

Short-Circuiting the Foreman.

"Why should a foreman have this power and duty? The answer is, because **no one** should come between him and his men. If he is to maintain an efficient, properly cooperating body of men in his department, the contacts of those men with the company must be continuously and almost completely through him. If the union can short-

circuit him by going to the top management, his prestige in and control over his department are seriously weakened. The same thing is true if the top management short-circuits him by keeping all contacts with the union, including adjustments, in his own hands.

"Top management, especially in industries newly organized, is very apt to do exactly this, partly because foremen are so often inexperienced in dealing with unions or lacking in definite training that would fit them to handle, in cooperation with the union, the problems which arise in their departments. It is also in part due to an excessive confidence on the part of top management in its own ability to handle industrial relations matters, and to an overestimation of its own and an underestimation of its foremen's knowledge and understanding of these problems. Sometimes, of course, the top management is so baffled by the labor problems with which it is confronted that the head executives cannot believe that a subordinate might be able to solve such problems. Yet oftentimes that is so.

"It is neutral for the union to short-circuit the foremen (i. e., to go directly to the seat of power without stopping to negotiate with subordinate executives) especially if the foremen lack the power to say 'yes' or 'no.' Unions will be willing to negotiate adjustments with foremen only if such a procedure is the clearly stated and firmly enforced policy of the company and if the foremen have the power to get down to brass tacks with the union and to make settlements."

"Changing Functions of the Foreman," by Albert L. Kress (Assistant to the President, Republic Aviation Corporation), Better Industrial Relations for Victory, **Proceedings of the Twenty-sixth Silver Bay Industrial Conference.** National Council of the Young Men's Christian Association, 1943, pp. 122, 123.

"The whole question of the foreman's responsibility and authority—hiring, discipline, firing—is no simple problem today. The fact that the foreman no longer has the time

to do his own hiring, coupled with present legislation and executive orders relating to manpower, tends to complicate the problem of building up the foreman as manager of his own department.

"In many plants, the foreman still has responsibility, but there is being set up a corps of experts to decide a lot of things he used to decide—such as upgrading, wage rates and so forth. Even on the procedure of discharging an employee, instead of the foreman's telling a man that he is through, the employee may be called into the Industrial Relations Department, where the foreman tells his side of the story and for initiating the action still lies with the foreman, but he is not empowered to take direct action on a release.

"The important thing is to get the line organization to understand what is available in the way of expert assistance and then to make use of it effectively. Certainly, the management does not want to take away from the foreman responsibility or authority for making decisions at the point where they should be made; but, because the picture has become so complicated, it has been the trend in modern industry to develop staff organizations that will make available to foremen and others in the line organization specialists in particular fields to help them, such as time— and rate-study men."

2. **The uncertainty of the foremen concerning their terms of employment and their lack of participation in formulating those terms.** Foremen have observed the increasing definiteness with which the terms of employment and working conditions are specified by contract for the rank and file workers. Many foremen have been promoted during the War from the rank and file where such conditions existed. As foremen they found uncertainties concerning their rights and prerogatives. The rules or policies governing sick leave, vacations, promotion, transfer and demotions were often not in writing and were inadequately understood. They were sometimes not explained. Grievances typically had to be presented personally and without the assistance of a steward or the support of an or-

ganized group. This situation could be compared with the effective grievance procedures for the organized rank and file. The fact that all foremen were not treated alike aroused suspicions of discrimination and a feeling of insecurity. The lack of assurance that there were uniform rules uniformly applied was a source of dissatisfaction.

The foreman had little or no participation in determining the terms of his employment, nor did he have any representative speaking up for him in the councils of management to press his case. If such occurred, it was more likely a considerate superior than an interest representative. The whole relationship of the foreman to higher management was too remote to inspire a sense of participation either in determining his own terms of employment or in formulating policies which he was obligated to execute.

This combination of conditions did not inspire self-respect nor lend dignity to the position of foremen.

3. **The lag in the adjustment of the compensation of foremen which occurred early in the war.** The war, with its large orders from abroad, its large orders from the American defense program, and eventually its enormous orders from the American war program caused the rank and file employees in most industries to work a large amount of overtime at one and a half times or even two times the regular rate. Foremen also were required to put in long hours of work. Many plants, however, had not made it a practice to pay overtime to foremen who were compensated by the month rather than by the hour. The foremen's stretches of overtime work were expected to be short and not to involve many extra hours. It was indicated that the foreman, however, had the advantage of ordinarily being kept on during hard times when rank and file employees were being dropped. The war, however, created a new situation for which the policies of many companies were not adapted. Eventually these policies were modified by many employers to include extra compensation to salaried foremen for overtime and Sunday work and in many instances for work on night shifts. Compensation

for overtime and night work in many plants did not begin until foremen had put in large amounts of overtime and night work over a period of some months. A lag in the compensation for overtime and night work seems to have been important in arousing the interest of foremen in organization in 1942. A table setting forth the date at which the various companies involved in these proceedings began to compensate foremen for overtime is given with the conclusions of the Panel in Part Five of this report.

4. **Insecurity in the position of individual supervisor resulting from the great temporary expansion in the number of foremen as a result of the war.** The war has required a great increase in the number of supervisors in many plants engaged in war work—particularly plants in the metal working industries. Most of the new supervisors were promoted from the rank and file employees in the same plant. Many of them (probably most of them) had belonged to unions of rank and file employees. Many of the new supervisors, especially in the shipyards still keep up their membership in the rank and file unions and are even prominent in the affairs of the rank and file unions. Some of the present foremen had previously played active parts in the rank and file unions as shop stewards or as members of grievance committees.

The end of the war will see a substantial shift of employment out of manufacturing, and especially out of the metal working industries into other branches of industry. This will mean a great reduction in the number of foremen in many plants now engaged in war work. The reductions will vary widely from plant to plant, but reductions of half or more than half will not be uncommon. In some plants involved in the cases before the Panel more than half of the supervisors will be laid off or demoted.

The prospective reduction in the number of supervisors has introduced great insecurity into the lives of all foremen, both new and old. No one knows which supervisors will be kept after the war. The man of long service fears that he may be dropped in favor of younger supervisors with shorter service. As the end of the war approaches,

the concern of supervisors over their future status naturally grows. They do not wish the policies which will govern the layoff, demotion, and transfer of foremen to be decided without their being consulted. Furthermore each supervisor wishes an ample opportunity to present his case in the event that he is selected for demotion or layoff. And yet in some companies the prospect is that the layoffs, demotions and transfers of supervisors will be made by top management with little or no consultation with supervisors and with little or no opportunity for them to present grievances arising from layoff, demotion, or transfer.

IX. The Policies of Trade Unions Toward the Organization of Foremen and the Extent to Which Foremen Have Been Organized by Unions Other Than the Foreman's Association of America.

Organization of foremen and other supervisory employees is not new. Although most unions of rank and file employees require members who become foremen to take out retiring cards and refuse to admit foremen as new members, foremen for many years have belonged to a few unions of rank and file employees. In some cases affiliation of the foremen is voluntary; in other cases it is compelled by the closed shop. Supervisory employees of rank similar to that of foremen or higher in a few industries have unions of their own.

A study of 186 constitutions of international and national unions by the U. S. Bureau of Labor Statistics, published in Bulletin No. 745, entitled "Union Membership and Collective Bargaining by Foremen" reveals that:

37 of these unions specifically exclude supervisors and foremen from active membership

29 unions; on the other hand, either permit or require foremen to be members

9 long-established unions (these, of course, do not include the Foreman's Association of America) are composed solely of persons of foreman and supervisory ranks

In addition a few unions, which are made up in the main of rank and file employees, have locals composed exclusively of foremen.

The constitutions of about 120 international and national unions do not mention foremen. The investigators of the Bureau of Labor Statistics conclude that "presumably most of these exclude foremen from membership, although some of their locals may include foremen in the absence of a constitutional provision debarring them."[1] Some unions which exclude foremen from active membership permit them to take out withdrawal cards and to retain death benefits or other insurance benefits. The definitions of excluded supervisory personnel vary in the different union constitutions. Usually the test is whether the supervisor has authority to hire and fire or whether he ordinarily initiates hirings or discharges by making recommendations which are usually followed. "Working foremen" and "gang leaders" are usually permitted to retain their membership because they do not have the authority to hire or fire or at least do not have the responsibility of initiating hirings or discharges.

The following unions exclude foremen from active membership:

American Federation of Labor

Asbestos Workers, International Association of Heat and Frost Insulators
Coopers' International Union of North America
Glass Bottle Blowers' Association
Glass Workers' Union, American Flint
Longshoremen's Association, International
Luggage, Belt and Novelty Workers Union, International Ladies Handbag
Maintenance of Way Employes, Brotherhood of
Meat Cutters and Butcher Workmen of North America, Amalgamated
Polishers, Buffers, Platers and Helpers' International Union, Metal

[1] U. S. Bureau of Labor Statistics, Bulletin No. 745, p. 6.

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Retail Clerks' International Protective Association
Stonecutters' Association of North America, Journeymen
Street and Electric Railway and Motor Coach Employees of America, Amalgamated Association of
Tobacco Workers' International Union

Congress of Industrial Organization

Architects, Engineers, Chemists and Technicians, Federation of
Automobile, Aircraft and Agricultural Implement Workers of America, United
Clothing Workers of America, Amalgamated
Communications Association, American
Federal Workers of America, United
Gas, Coke and Chemical Workers, United
Hosiery Workers, American Federation of
Longshoremen's and Warehousemen's Union, International
Marine Cooks' and Stewards' Association of the Pacific Coast
Marine and Shipbuilding Workers of America, Industrial Union of
Newspaper Guild, American
Office and Professional Workers of America, United
Oil Workers and International Union
Paper, Novelty and Toy Workers International Union, United
Retail, Wholesale and Department Store Employees of America, United
Rubber Workers of America, United
Shoe Workers of America, United
State, County and Municipal Workers of America
Steelworkers of America, United
Textile Workers Union of America
Transport Service Employees of America, United
Transport Workers Union of America

Unaffiliated

Brewery, Flour, Cereal and Soft Drink Workers of America, International Union of
Firemen and Enginemen, Brotherhood of Locomotive

Board's Exhibit No. 19

The following unions include both Foremen and Production Workers:

American Federation of Labor

Barbers, Hairdressers and Cosmetologists' International Union of America, the Journeymen
Blacksmiths, Drop Forgers and Helpers, International Brotherhood of
Bookbinders, International Brotherhood of
Bricklayers, Masons and Plasterers International Union of America
Carpenters and Joiners of America, United Brotherhood of
Cigarmakers' International Union of America
Fire Fighters, International Association of
Hatters, Cap and Millinery Workers' International Union
Lathers, International Union of Wood, Wire and Metal
Leather Workers' International Union, United
Lithographers of America, Amalgamated
Molders and Foundry Workers Union of North America, International
Painters, Decorators and Paperhangers of America
Paper Makers, International Brotherhood of
Photo-Engravers Union of North America, International
Plasterers' International Association of the United States and Canada, Operative
Potters, National Brotherhood of Operative
Printing Pressmen's and Assistants' Union of North America, International
Stereotypers and Electrotypers' Union of North America, International
Switchmen's Union of North America

Congress of Industrial Organizations

Glass, Ceramic and Silica Sand Workers of America, Federation of
Mine, Mill and Smelter Workers, International Union of
Stone and Allied Products Workers of America, United

Unaffiliated

Machinists, International Association of
Mine Workers of America, United

Board's Exhibit No. 19

Railroad Signalmen, Brotherhood of
Railroad Trainmen, Brotherhood of
Train Dispatchers, American Association of
Typographical Union, International

The following unions are composed solely of foremen and supervisors:

Maritime Unions

National Marine Engineers' Beneficial Association (C.I.O.)
National Organization Masters, Mates, and Pilots of America (A. F. of L.)
United Licensed Officers of the United States of America (A. F. of L.)

Railroad Unions

Railroad Yardmasters of America
American Railway Supervisors Association, Inc.

Government

National Association of Master Mechanics and Foremen of Navy Yards and Navy Stations (A. F. of L.)
National Association of Postal Supervisors
National League of District Postmasters of the United States
National Council of Officials of the Railway Mail Service

Foremen's Locals

Textile Foremen's Guild, Paterson, New Jersey, Local of the Textile Workers Union (C. I. O.)
Supervisors of Mechanics (A. F. of L. Railway Labor Department).

Obviously there is an important distinction between foremen being organized by the rank and file, in fact being **compelled** in some instances to join a union of the rank and file, and the foremen organizing unions of their own. The importance of this distinction was recognized by Chairman Millis of the National Labor Relations Board in his dissenting opinion in the Maryland Drydock case. In the printing trades and in many of the building trades the foremen are required to belong to the unions of the rank

and file. In the printing trades this requirement goes back to 1889. In both of these branches of industry the closed shop is the general rule in union contracts. The rank and file wish to have the foremen in their unions so that the foremen will be subject to the rules and discipline of the unions. Unfortunately the experience of the printing trades and building trades with the requirement that foremen belong to the rank and file unions has not been exhaustively studied. Following are several comments upon this experience.

Mr. Robert K. Burns, in his study of collective bargaining in the newspaper industry says:[1]

> "In the printing trades foremen usually acquire the experience necessary for their jobs only by having worked as journeymen; consequently 'they have a definite bond of experience and understanding with their fellow craftsmen,' as a union spokesman put it. The requirement that they be union members is also attributable to the number and complexity of trade regulations. The unions contend that a foreman who is a union member, while recognized as the representative of management, is at the same time better acquainted with union rules and their enforcement, and thus is able to manage employees with the least friction. They argue that a foreman can better present the employer's side to his fellow workmen without being suspected of hostility to the union. Union foremanship is also important in assuring the unions that no nonmember will be employed on union work. In the commercial branch of the industry particularly, foremen are frequently 'working foremen,' or at least take a hand in emergencies.
>
> "In early years, many publishers were strongly opposed to having their representatives owe allegiance to the union. As contracts became more inclusive, however, and right of both employers and unions more clearly defined, publishers in general ceased to object to the foreman law. They are now chiefly concerned

[1] The Twentieth Century Fund, How Collective Bargaining Works, pp. 67-68.

lest foremen should be subject to union discipline for differing with the local union in the interpretation of the terms of a contract. The internationals generally recognize the justice of the publishers' position and a method is provided for the joint settlement of such disputes. The unions do not, however, forego their right to discipline foremen for disobeying laws relating to internal union matters, or for deliberately disregarding union rules. Although there is still occasional complaint that some locals attempt, by disciplining foremen, to enforce conditions not provided for in contracts, the practice is not so common as to constitute a major issue.

"The foreman represents the employer in dealing with grievances arising in his department. He settles many day-to-day grievances and complaints with the chapel chairman, with recourse to the joint standing committee or to arbitration. A complaint by a union member is taken up by the chapel chairman, who is the administrative agent of the union in each office. If he and the foreman disagree, the issue is considered by the executive committee of the local union. If the union and the foreman or publisher still fail to agree, the matter goes to the joint standing committee, and eventually may be taken to arbitration for final settlement."

Miss Emily Brown, in her study of collective bargaining in book and job printing says:[2]

"In book and job printing the union membership of foremen is so thoroughly established that it does not become an issue except occasionally in a newly organized plant. It is clearly recognized that the foreman's first responsibility is to management. His duty to the union is to administer the agreement fairly in the plant. There are advantages in this system in that the foreman, necessarily a skilled man himself, is thoroughly acquainted with the problems of the men and with the union agreement and rules. He is in good

2 Ibid., footnote, p. 147.

position, therefore, to interpret the union's position to management, and vice versa. However, the fact that he may be disciplined by the union, if the union considers that he has violated the agreement or a union rule, is a source of difficulty in some cases. Fear of union discipline sometimes interferes with a foreman's efficiency, although the strong foreman is little affected. There is in some cases a need for more thorough protection of foremen from union discipline for carrying out office orders, pending determination of an issue through the negotiation or arbitration machinery."

Mr. William Haber in his study "Industrial Relations in the Building Industry" says:[1]

> "The employer objects to such rules (regulating foremen's work) chiefly because the union reserves the right to discipline the foreman for his conduct on the job. A foreman convicted of 'rushing' is subject to stricter discipline than a worker guilty of the same offense. His activities on the job are often subject to review by the union; workers may file complaints against him. Conviction results in suspension from foreman's duties for a period of time, a fine, and frequently even suspension from the union. These limitations on the foreman's power restrict his supervisory initiative and deprive the employer of much of the value of his service. Recently, by giving the right of reviewing a foreman's activities to a joint trade board, this objection has been partly met."

Although the unions in the printing trades and in many of the building trades require that the foremen belong to the union of the rank and file, all of these unions regard foremen as representatives of management and subject to removal and discipline by management without recourse by the union or review of management's decision by a neutral. In other words, these unions do not treat discharge or discipline of their foremen members as a grievance of the union. A few local unions in the printing

[1] Industrial Relations in the Building Industry, by William Haber. Cambridge, Harvard University Press, 1930, p. 218.

trades have negotiated wage or salary scales for foremen, but such scales are exceptional. The view of the unions in the printing trades appears to be that the foremen are capable of negotiating their own differentials above the scale of the rank and file. In other words, membership of foremen in the unions of rank and file workers in the printing trades and the building trades has not as a general rule meant collective bargaining for the foremen. Indeed it has meant something very different—an attempt of the rank and file to protect the interest of the rank and file by the exercise of limited control over the foremen.

In the railroad industry some of the rank and file unions include foremen. The relationship between the foremen and the rank and file unions appears to be very different in the railroad industry from that in the printing trades or the building trades. The rank and file unions bargain for foremen and include conditions for foremen in their agreements. Furthermore, the rank and file unions in the railroad industry appear to be less interested than the unions in the printing trades or building trades in controlling the foremen. It is a criminal offense for a carrier subject to the Railway Labor Act to sign a closed shop agreement with a labor organization. The absence of the closed shop in the railroad industry means that the unions of the rank and file are less able to discipline foremen than are the unions in the printing trades or the building trades. The National Mediation Board, in determining bargaining units, has usually accepted "class" or "craft" with whatever inclusions or exclusions have become the general practice in the industry. The Board does not seem to have faced the propriety of supervisors belonging to the unions of the men whom they supervise.

In both the railroad industry and the maritime industry there are several unions composed exclusively of supervisors, such as the Railroad Yardmasters of America, and the National Organization Masters, Mates and Pilots of America. The former union is not affiliated with either the A. F. of L or the C. I. O.

Board's Exhibit No. 19

X. Procedures Available to Foremen For the Settlement of Grievances in Plants Not Involved in These Disputes.

The Foreman's Association of America has established grievance precedures in three enterprises not involved in cases before this panel—the Detroit Lubricator Company, the Ford Motor Company, and the United Stove Company, of Ypsilanti, Michigan.

1. **The Detroit Lubricator Company.** No written contractual arrangements for handling grievances exist at this company because the organized foremen and the management get on satisfactorily without them.

2. **The Ford Motor Company.** The contract with the Ford Motor Company, signed May 9, 1944, provides grievance machinery for the first time in the relations between the company and the F. A. A., although agreements governing wages and the classification of supervisors extend back to November 5, 1942.

The Ford Contract provided for three plant-wide representatives for each plant and a chairman for each shift to represent supervisory employees in the settlement of grievances. Provision is almost made for a Company Committee of three with authority to render decisions binding upon the Company and for an Association Committee of three with authority to render decisions binding upon the Association. These two Committees together constitute a Joint Committee meeting fortnightly or on call.

Under the Ford Agreement a foreman charging a violation of the agreement must first attempt to adjust the matter within his department. If the foreman fails to obtain a satisfactory adjustment, the issue may be considered a grievance and may be submitted to the superintendent for disposition. At this time the aggrieved foreman may have the services of his Chairman, who must present the grievance in writing. In the event of an unsatisfactory decision by the superintendent, the written griev-

ance may next be taken up by a Plant-wide Representative for negotiation with the Superintendent or with the Foreman's Personnel Office of the Company. The decision of the Foreman's Personnel Office may be appealed in writing to the Joint Committee. If the Joint Committee fails to dispose of a case within ten working days after first considering it, either Committee may ask for an impartial person to meet with the Joint Committee to act as Temporary Chairman for purposes of reviewing the case and casting a deciding vote. The head of the Labor Relations Department of the Company and the national president of the Association have authority to decide whether a Temporary Chairman will be called in and, if so, to select the person; but failure to agree upon a Temporary Chairman within two weeks is considered to exhaust the grievance procedure.

In cases of discipline handled in the first instance by the District Labor Relations Office, the foreman is given the opportunity to appear and be heard, and the right to be represented by this Chairman if he so desires. Disciplinary action which he considers a violation of the Agreement, he may appeal to the Foreman's Personnel Office with the assistance of his Plant-wide Representative. Similarly, disciplinary cases which go to the Foreman's Personnel Office in the first instance may be handled by the Plant-wide Representative and unsatisfactory decisions may be appealed to the Joint Committee.

The Procedure in the Ford Contract is limited to grievances growing out of unfair treatment in violation of the Agreement. It allows the foreman to be heard and to be represented by his Chairman, his Plant-wide Representatives, and eventually by his Association Committee. Report to an impartial referee as Temporary Chairman of the Joint Committee, however, depends upon the willingness of the Head of the Labor Relations Department of the Company and of the national president of the Association to select such a referee and their ability to agree upon the person. It will be noted that this is considerably short

of the request repeatedly made before the Panel for a grievance procedure terminating in arbitration.

This grievance procedure has been in operation too short a time to determine how effective it will be. It has undoubtedly afforded an orderly way for the settlement of grievances, but inexperience and suspicion have impeded adjudication. On July 20, 1944, the grievance procedure was ignored when foremen, protesting the sudden demoting of 23 foremen, caused a work stoppage. The stoppage occurred among foremen in the Pressed Steel Building and the Rolling Mill of the River Rouge Plant. About 1100 workers in the Pressed Steel Building had been laid off in the previous two or three months. In the hope that business would recover, the company had laid off no foremen. Some of the foremen, including some of their leaders, were apparently under the impression that the Ford Company was not permitted under its contract with the Foreman's Association to reduce the number of foremen without consulting with the Association. The foremen did not leave the building. They gathered in the office of the superintendent to protest. The failure to give notice to the foremen aggravated the situation.

The Ford Company has about 9,000 foremen in all. Between July 3, 1944, and early in October, 1944, a representative of the company told the technical assistants of the Panel that the company had demoted 1,023 foremen. The company has established the Foremen's Personnel Office to which has been transferred the powers which the superintendents had over the discharge, promotion, and demotion of foremen. The Foreman's Association reports that in 465 demotion cases seniority was followed in 391; in 74 cases the ability clause was invoked. In 12 of these cases the foremen, demoted on account of lack of ability, accepted the company's position. Of the remaining cases, 33 were appealed to the Joint Committee which adjusted 4 and failed to reach adjustment in 29. In addition to the demotion cases there had been about 140 other grievances handled by the grievance machinery in the Ford Company during July and August and September,

1944. Nine out of ten of these cases were adjusted by the Foremen's Personnel Office or below A representative of the company reported to the technical assistants of the Panel that early in October the Ford Company had agreed to send seven cases to the umpire.

The miscellaneous grievances include cases of foremen discharged or disciplined for drunkenness on the job, for habitual lateness or absenteeism, gambling, loafing, smoking, failure to produce, permitting rank and file employees to break company rules, or permitting employees to loaf. A grievance originating with the United Automobile Workers may become a foreman's grievance. For example, the United Automobile Workers may charge a foreman with smoking at his work. If the union wins the case and the foreman is disciplined, the foreman may start a grievance on the ground that the decision was wrong or on the ground that the discipline was too heavy.

3. **The United Stove Company of Ypsilanti, Michigan.** A contract between the Foreman's Association of America and this company was signed on September 5, 1944. This contract establishes an Association Committee of two foremen with authority to bind the Association. The grievance procedure is limited, however, in that it provides merely that any difficulties arising between the Company and the Association or any of its members, shall be settled between (1) any member of the Association and the General Superintendent, (2) between the Association spokesman and the General Superintendent or (3) between the Association Committee and the Plant Management. Promotions and demotions deemed unfair and in violation of the Agreement, unreasonable discipline, and any difficulties arising between the Company and the Association or any of its members are to be determined by the procedures stated. There is no formal provision for a joint committee, review board, or impartial referee (Detroit Rec. 3914).

Board's Exhibit No. 19

PART FOUR.

FINDINGS IN SPECIFIC CASES.

XI. Aeronautical Products, Inc.

1. **Background.** This corporation manufactures precision aircraft engine parts. It is a relatively new organization (since 1936) and as an industrial unit in the Detroit area it is small (Detroit Rec. 3305, 3306). All of its principal officers have been foremen (Detroit Rec. 3305). The Company has had cut backs resulting in a decrease of its personnel. In peak production in March 1943 it employed 1445 rank and file workers and 35 foremen, whereas on June 14, 1944 its workers were 990 in number supervised by 24 foremen (Company Exhibit 1).

Between May 1 and May 8, 1944, several foremen of Aeronautical Products, Inc. were discharged. Efforts of the foremen to discuss these cases with the management were unsuccessful. The foremen struck on May 9 and remained out until May 17. The date on which these foremen were chartered by the Foreman's Association of America is given as May 6 or 8 (Detroit Rec. 281) and May 12 (Statement of the Association, 18). Certain of the striking foremen were not taken back to work and others were given production jobs (Company Exhibit 11). The case was referred to the Regional Board which worked out a settlement (Company Exhibit 12). Other grievances concerning differential rates of pay, transfers, and related matters were presented to the Panel.

2. **General level of compensation.** There is no grievance as to rates of pay and the foremen so concede. All foremen are hourly rated (Detroit Rec. 267). Mr. Goodman, the principal witness for the Association, and its president (Detroit Rec. 272) said:

> "The foremen at Aeronautical do not have an underlying or a determining or burning dissention shall I say, or ill feeling against the Company for their rates of pay . . ." (Detroit Rec. 286).

Again he expressed his satisfaction with the rates (Detroit Rec. 288), and asserted there was dissatisfaction because of the small differential between the sum paid to a foreman and the earnings of some of the men under him (Detroit Rec. 288).

On behalf of the Company it was shown that a job description of foremen had been prepared. This was used in connection with an application for a wage increase filed with the Regional War Labor Board at Detroit in February 1944 (Detroit Rec. 3307; Ex. 2). The application assigned as the principal reason for the requested increase that a new rate scale for workers had been established as of November 25, 1944, and that to maintain a proper ratio between the earnings of the foremen over the top production workers under them, it was necessary to increase the rate ranges for formen. The plan proposed was for each of twenty departments. The amount of pay of the supervisors was to vary in accordance with the skill, training and experience of the foremen. The Company asked permission to adjust rate ranges of supervisors so that a differential of 25 cents per hour over the earnings of the top production worker might be paid, and set out in exhibit form a schedule showing the straight-time hours and earnings of the highest paid worker in each department. The application was granted, and new rate schedules were set up and made retroactive to January 1, 1944.

The lowest scale is in Department XIII (coupling), where the range is $1.20 to $1.40 per hour, and the highest in Department X (Tool Room), where the rate is $1.70 to $1.90 (Company Exhibit 4).

3. **Differential between earnings of supervisors and earnings of production workers under them.** Witness Goodman had no complaint against rates but did complain that a foreman having the responsibility of a department received only 10 cents an hour over his set-up man (Detroit Rec. 288); yet he admitted that there was a fair differential maintained at Aeronautical (Detroit Rec. 287). The witness on cross examination admitted that he was the

foreman that he referred to as receiving only 10 cents an hour over his set up man (Detroit Rec. 318), who was the highest rated man in the department. The evidence of the Company is positive. Miss Burns, its labor relations counsel, testified that the rate range for foremen is exactly 25 cents per hour above the rate range for the top production worker in the department (Detroit Rec. 3312). It might be possible that a new foreman in receiving the lowest rate in the scale received only 10 cents above a worker who was getting the top figure in his range, and this in part explained Mr. Goodman's situation. He was a new foreman when the ranges were established and in a small department which has since expanded to require a job setter. On July 1 Mr. Goodman received an increase. (Detroit Rec. 3316, 3317). Witness Burns said that the Company knew that, when the rank and file received a raise, there would be a sore spot as to the differential and hence a new differential was applied for (Detroit Rec. 3383). Since the adjustments were made early this year, no complaints have been received, except the "point" Mr. Goodman made, and except those which might arise over new jobs not evaluated by the War Labor Board (Detroit Rec. 3383). The witness ascertained the differential, as of the date of hearing, between Mr. Goodman's rate and the highest paid worker in his department; she reported that Mr. Goodman's rate was $1.60 an hour and the highest worker received $1.35—a 25-cent differential.

The Panel finds no important grievance at Aeronautical Products Corporation because of the differential in pay as between supervisors and men reporting to them.

4. **Bonus on night shifts.** Foremen, as well as rank and file receive a 5-cent an hour bonus for working on the afternoon and evening shifts (Detroit Rec. 271, 3315). There is no grievance over bonuses for night shifts.

5. **Overtime.** There is no problem regarding overtime. All foremen are on hourly rate and receive time and a half over eight hours in any one day, over 40 hours in one week and for Saturday if it is the sixth consecutive

day, and double time for Sunday if it is the seventh consecutive day worked (Detroit Rec. 270). In so far as overtime is concerned supervisors receive the same treatment as do the rank and file, and are governed by Executive Order 9240 (Detroit Rec. 270, 3313). For holidays they receive time and one-half (Detroit Rec. 3313). The Company said it paid a supervisor time and a half for Saturday, even if he had not worked 40 hours in the preceding work week. The foremen receive all of the benefits of Executive Order 9240 while being relieved of some of its requirements (Detroit Rec. 3314).

6. **Sick leave.** There is no sick leave plan either for foremen or for the rank and file (Detroit Rec. 271). The Panel has expressed its views on sick leave in Section XXVI.

7. **Vacations.** There is an annual bonus plan in lieu of a vacation. It is based on seniority, plus hours worked (Detroit Rec. 3314). An employee who has worked eight months receives 16 hours pay, and thereafter the hours allowed increase in accordance with length of service. An employee of five or more years of service receives 80 hours. This plan is the same as that in effect for the rank and file (Detroit Rec. 3315).

8. **The issue of seniority.** This subject is intimately related to grievances. While transfers and discharges were discussed, the foremen presented little direct testimony as to seniority as such. In fact, Witness Goodman rather indicated that supervisors should be paid according to ability (Detroit Rec. 287). The Company, however, clearly expressed its position on the weight to be accorded length of service in making transfers of supervisory personnel.

While the contract between the Company and the rank and file union (C. I. O.) makes no mention of the seniority of demoted foremen, both the company and the unions recognize a foreman's accumulated seniority, **if he had been previously a member of the union** (Detroit Rec. 3327).

If he was a member of another union, he will be accorded seniority if his union is pledged to the principle of reciprocity. If a demoted foreman had never been affiliated with the C. I. O., his seniority would not be accepted (Detroit Rec. 3327). The Company asserts that training, seniority, and ability being equal, seniority has been generally recognized; it is likewise recognized as to shifts (Detroit Rec. 3397). The Company opposes making seniority an absolute or a controlling factor in the promotion or demotion of foremen (Detroit Rec. 3397). The management fears that straight seniority would lessen initiative among foremen, as it has, according to the Company, among the rank and file where even absolute seniority does not prevail (Detroit Rec. 3398).

It should be said that the length of a foreman's vacation (i. e., in this Company being the number of extra hours for which he receives pay) is determined by his length of service (Detroit Rec. 3327).

After the foremen's strike, the status of those foremen for whom no supervisory posts were available created an issue between the Company and the Local C. I. O. (Detroit Rec. 3362). The Local C. I. O. proposed that any demoted foreman be reinstated to any post or shift to which his union seniority entitled him. There were six such foremen. The C. I. O. argued that a foreman with no previous union membership must be laid off when no longer needed as a foreman. The Company did not agree, whereupon the union issued a supplementary statement, i. e., that all striking foremen who were to be demoted be relegated to the bottom of the seniority list. The Company had not acted upon the supplemental proposal at the time of the hearing. It asserts that the union should waive its strict interpretation of the seniority clause as against demoted Foremen Murdock and Meaddough who had no service as production workers. The problem was complicated because, according to the C. I. O., two hundred production workers had been laid off. (See Detroit Rec. 3362, 3367; Company Ex. 12.) All demoted men seem to have been working on the day of hearing (Detroit Rec. 3367).

Board's Exhibit No. 19

The Panel's conclusions regarding seniority are given in Chapter XXVII and Chapter XXVIII.

9. **Promotions, demotions and discharges.** One of the matters which most concerned the foremen was the alleged ill treatment of foremen prior to and after the strike. Instance after instance is referred to, and those which took place rank as a department head—a grade above that of foreman. This happened about ten days before the hearing, at which time a man named Tagg was assuming the duties of a foreman in two departments (Detroit Rec. 253, 254). The gist of the complaint seems to be that Tagg was working as a foreman without a foreman's badge (Detroit Rec. 253). The evidence for the Company is that Mr. Tagg was an efficiency production man, and when a foreman quit, he was put into a department to study a bottleneck and to report. There was no change in his badge although he was acting as a foreman (Detroit Rec. 3400).

Chester Murdock, the foremen say, was called into the office and given two weeks notice of discharge (Detroit Rec. 274). A committee of two members of the Association was first informed that Murdock was fired for running scrap. The committee then went to see Mr. Ward, a recently hired plant manager, who told them that Murdock was a good mechanic, but not a good supervisor (Detroit Rec. 275). The witness expressed the belief that Mr. Ward, because of his short time with the company, was not in a position to judge whether Mr. Murdock was a good supervisor. A Mr. Tanner had been brought in for training in the department and later took over the mill and drill departments of which Mr. Murdock was foreman (Detroit Rec. 275). The incident, it is said, agitated the shop foremen (Detroit Rec. 276). The instance was adduced by the foremen, not to secure the reinstatement of Mr. Murdock, as his case as a disciplinary discharge had been certified to the National Labor Relations Board (Detroit Rec. 277), but to show the arbitrary nature of a discharge at Aeronautical Products, Inc.

The Company claimed Mr. Murdock was not a good supervisor; that he was not discharged, but was given two weeks' notice of a demotion (Detroit Rec. 3379). He was offered top rate as an all around set-up man, and in the alternative he was extended an opportunity to learn the aircraft work on the helicopter (Detroit Rec. 3360). He seemed to be in favor of taking the helicopter work, but went out on strike. When he returned, he accepted a set-up job; and there has been no complaint on his part. The local C. I. O., however, has asked that he be discharged (Detroit Rec. 3381), as he has no seniority rating.

It further appeared that Mr. Jackson, the president of the corporation, was deeply interested in the development of the helicopter. He was experimenting with it as a personal hobby, and thought when he offered Mr. Murdock the opportunity of further exploration into the field he was making it possible for him to advance. When Mr. Murdock spurned his suggestions and struck without notice, he, President Jackson, felt that he had been "stabbed in the back" (Detroit Rec. 3412).

Mr. Goodman said Theodore Galisek and Anthony Elgin were demoted, which with the demotion of Chester Murdock, "got the boys thinking" and led directly to the affiliation with the Foreman's Association of America (Detroit Rec. 281).

10. **History of collective bargaining and grievance procedure.** The rank and file have a grievance procedure under their contract and the foremen are aware of that (Detroit Rec. 256). There has been no formal grievance machinery for supervisors at Aeronautical Products, Inc. When three foremen had been discharged or demoted, an effort was made to see Mr. Jackson. Mr. Goodman says all that a committee of foremen wanted to know was whether Mr. Jackson would discuss the problem one way or another (Detroit Rec. 282). It is indicated that when Witness Goodman told the "boys" that there was no opportunity to speak to Mr. Jackson, the strike occurred (Detroit Rec. 282). Witness Goodman said (Detroit Rec.

284) that the only time the foremen were able to say anything about their grievance was when each one went in as an individual and took up his personal grievance with the superintendent, the plant manager, or Mr. Jackson. If there was no satisfactory answer, that was the end of the matter (Detroit Rec. 284). Mr. Goodman described the grievance procedure thus:

> "We have no grievance procedure other than standing on your own two feet alone to argue with whomever you have the opportunity or whomever happened to be there in authority at the time—Mr. Jackson, Mr. Ward or Mr. Marlow, that is the president, the general manager, or the superintendent" (Detroit Rec. 285).

The low regard in which the foremen hold the grievance procedure now existing (i. e. personal approach) is indicated by the fact that Witness Goodman stated that the men do not take up problems with management (Detroit Rec. 310).

The Company has the history of collective bargaining with the rank and file unions (Company Exhibit 5) but the foremen claim they have no resort, as a group, to management, which they say will not receive a committee, will not answer their letters, will not respond to telephone calls (Detroit Rec. 317), and will not talk to any representative of the foremen. The Company says it is a small plant and that the president, Mr. Jackson, is present on all three shifts, and may be seen by anyone (Detroit Rec. 3319). The Company said that it does not believe its foremen would again strike because the organizational drive is over and that there are no longer any grievances.

11. **Failure of the company to restore all striking foremen to their previous positions.** The principal unresolved grievance at Aeronautical Products arises out of what took place **after** the strike. Specifically, the Association contends that the Company failed to maintain the status quo arrangement under which the striking foremen returned

to work. It is said foremen were discharged, demoted, and departments consolidated, all of which resulted in a substantial decrease in the number of foremen's posts.

The post-strike happenings are well documented in Company Ex. 11 and, in brief, are these: On May tenth Mr. Keyes telegraphed to the Company that the Foreman's Association would not order a return to work until a joint conference was held regarding the status quo of striking foremen.[1] On the twelfth, the National War Labor Board telegraphed the Company to inquire whether striking foremen were to be discharged or otherwise discriminated against. On the thirteenth, the Company wired the Board that in conformity to its regular policy 26 foremen who had refused to work had been discharged. This wire was materially modified by a later one to the effect that the Company did not refuse to take back a foreman for striking, but because of reduced production. It said that the Company was willing to take back as foremen those strikers who were fitted for the supervisory posts which were left; as to the others, they would receive jobs as production employees if they were eligible under the collective agreement with the rank and file.

On the seventeenth, the War Labor Board wired the Company that the Foreman's Association had directed the officers of the striking foremen to call a meeting for the purpose of returning to work. On the eighteenth the Board wired the Company that it had learned six of the striking foremen had not been taken back, that seven had been reduced to production jobs and that others were required to supervise two departments, whereas in the past they had supervised only one. The Company was directed to restore the strikers to the positions they occupied on the day they struck. The Board said that, while it recognized the right of the Company to rearrange foremen assignments, the status quo must first be restored. The Eleventh Regional War Labor Board was instructed to conduct an investigation and to assist in bringing about

[1] As the wires themselves are in the record and may be consulted, no effort has been made to quote from them in extenso

an agreement upon the changes necessary after affecting restoration of the status quo (Company Ex. 11).

The exhibit sets forth the written communications between the Company, the War Labor Board and the Union. There are, however, substantial differences in the oral testimony developed at the hearing, the Union claiming arbitrary action and discrimination, and the Company asserting necessary reorganization upon the curtailment of production.

Mr. Goodman said the failure to maintain the status quo was a grievance "very definitely" (Detroit Rec. 290); that a return-to-work meeting was held on the evening of the seventeenth, and that he (the witness) urged the foremen to go back to their jobs (Detroit Rec. 291). At 6:45 A. M. on the eighteenth the foremen reported at the plant, but they were not all given posts. All production control men were told there was nothing available for them, although later in the day they were given work with the rank and file (Detroit Rec. 292). Later those foremen who were not given foremen's rank were given production jobs (Detroit Rec. 293). The Association claims that there were 42 strikers, including foremen and production control men (Detroit Rec. 294). Eleven foremen were taken back each with two departments (Detroit Rec. 297, 298).

The Panel believes that the report of Disputes Director Ronald W. Houghton of the Detroit Regional Labor Board dated May 24, 1944 was acceptable to both parties, but the foremen claim it has been violated by the Company (Detroit Rec. 301).

The Company in answer to the charges of discrimination says that the demotions of foremen were necessary by reason of the lay off of employees. There had been curtailment in production and one entire department had been shut down. Lengthy sessions had been held as to what the foremen could do until there were further openings. Two of the demoted foremen had come to work the Saturday previous to the strike. Exhibit 12, the report of the Disputes Director of the Detroit area, indicates that

there were some reorganizational changes contemplated by the Company as early as February 1944, and that the inspection force had been reduced from 300 to 150 during the pervious three months period.

The only unresolved grievances at Aeronautical Products, Inc. arise out of the alleged failure of the Company to carry out the provisions of the report of the Disputes Director. Since this matter at the time of the hearings of the Panel was before the National Labor Relations Board, no finding is made by the Panel.

XII. Baldwin Locomotive Works.

1. **Background.** The Baldwin Locomotive Works is successor to the business established in 1811. Of its four divisions, the three at Eddystone, Pennsylvania, are involved in these proceedings. The products of the Company include locomotives, army tanks, heavy machinery, instruments, catapults, steering gears for ships, propellers, and other such items, sold now largely to the government (Baldwin Rec. 164-166). The Eddystone plant employs some 16,000 persons. About 564 supervisory employees are here involved. They include superintendents, assistant superintendents, general foremen, assistant general foremen, foremen and assistant foremen, supervisory police, and supervisory fire department employees who are represented by Lodge 91 of the International Association of Machinists (A. F. L.). Counsel for the union stated, however, that no superintendents belong to Lodge 91 (New York Rec. October 10, 158).

These supervisory employees organized during late 1943 and were chartered in December, 1943. On November 8, 1943, and subsequently the Union requested conferences with the management to negotiate a contract and was refused. A request to the National Labor Relations Board for investigation and certification of representatives was dismissed by the local Board, December 6, 1943. This ruling was sustained on appeal by the National Board on February 10, 1944. The case was then certified to the War

Labor Board on March 1, 1944. A proposed contract submitted to the Company by the Union on April 12, 1944, covering recognition, wages, hours, working conditions and grievance procedure was rejected by the Company. In a vote taken May 20, 1944, under the War Labor Disputes Act, 363 employees voted in favor of a strike and 108 voted against such action. No strike has since occurred. The Union presents to the Panel a number of complaints which fall broadly under the following headings: wage inequalities; overtime pay; bonus for night shifts; discharges; transfers, and demotions; seniority, grievance procedure and negotiation of an agreement.

The Company is emphatic in insisting that the issue in this case is collective bargaining and that the Union seeks to have the Board compel the Company to negotiate with the union and sign an agreement with it. This the Company contends is beyond the jurisdiction of the Board.

The union frankly asks that the Board order the Company to negotiate with the union, as the representative of the foremen, and reach an agreement to be put in writing and signed. In the event issues are unresolved it would have the Regional Board step in to settle them (Baldwin Rec. 149-150, 306-309, 311). By not asking for exclusive recognition the union contends it brings its request within the jurisdiction of the Board.

2. **Complaint that salaried foremen earn less than hourly-rated foremen and hourly-rated production workers.** The wage dispute in this case appears not to concern the general levels of supervisory pay so much as inequalities which are believed to exist. The hourly-rated supervisors receive $1.20 to $1.50 an hour, the last increase having been granted in 1942, when production workers received larger increases than these supervisory employees. The salaries of foremen appear to range from $325 to $400 per month.

The principal complaint over wages is that the salaried foremen earn less than hourly-rated foremen and hourly-rated production workers. In Exhibit B to its Statement,

the union presents a number of cases in which such differences in earnings occurred. The hourly-rated foremen and production workers get over-time in excess of 40 hours, time and one-half for the sixth consecutive day's work, double time on Sunday, and a night shift bonus, whereas salaried foremen receive no such extra compensation. Thus if these hourly employees work more hours than do foremen their earnings may be greater. Witness Hughes for the union implies that overtime hours are probably the greatest single factor which would account for the difference in earnings (Baldwin Rec. 54, 55). Witness King, an assistant foreman, complains that he is not permitted to work every Sunday whereas rank and file employees are (Baldwin Rec. 139); consequently his earnings are less than those of the rank and file.

While foremen may earn less than production workers under them, their rates of pay are rarely less. The only complaint on this score is made by Witness King to the effect that one employee under his supervision, engaged in the erecting and fabricating of structural steel, receives the same rate he does, $1.35 per hour (Baldwin Rec. 138).

Witness Holcomb, vice president of the Company, in discussing this complaint stated that the Salary Administration Committee of the Company had attempted to establish proper differentials between the various grades of employees. A 10 per cent to 15 per cent differential is generally maintained between Supervisory employees and the average for the top 10 per cent of the employees supervised (Baldwin Rec. 342, 351). This is based on a work week of the same number of hours.

In only two shops would it be possible for the hourly rates of assistant foremen to be below the hourly rate of men supervised. In those shops highly skilled tool and die makers are employed. But even here the rates of assistant foremen are correspondingly higher (Baldwin Rec. 343). As an illustration of difference in hours resulting in greater earnings for the rank and file, the company checked the complaint of Fritz Heim. The complaint

was that Heim earned $85.15 and an employee he supervised earned $115 for the same week. Heim, however, worked 48½ hours and the rank and file employee worked 72 hours (Baldwin Rec. 368, 369).

Under cross-examination Witness Holcomb admitted that "in isolated cases" salaried foremen working as many hours as the employees supervised would still earn less (Baldwin Rec. 375). But the Company contends that this is offset by various privileges other employees do not have and by a year-end bonus. Witness Cavan indicated that early in 1944 he received a bonus of $500 (Baldwin Rec. 122). Witness Hughes stated that when the bonus is divided by the number of uncompensated, overtime hours, it does not amount to very much (Baldwin Rec. 54).

The existence of inequalities which the Company considers should be corrected is indirectly admitted in the statement of Mr. Holcomb that an application had been filed with the Salary Stabilization Unit which would have permitted the correction of inequalities arising from wage rates which needed adjustment. This application was denied. The complaint here, as in other cases, is in considerable measure against the wage stabilization policy of the government which has prevented the employer from correcting inequalities as proposed.

3. **Complaint that supervisory employees doing the same work are paid different rates.** According to the Union, assistant foremen with relatively equal responsibilities, similar duties, and comparable numbers of men to supervise may and do receive different hourly rates. It is said the same holds true of salaried supervisors. Rectification of these inequities, it is argued, is permissible under the wage stabilization policy (Statement of the Union 6; Baldwin Rec. 53, 54).

The Company states that not in a single shop do men in the higher level of supervision receive lower compensation than supervisors below them (Balding Rec. 348, 349). Mr. Holcomb explained that the operations vary in the various

shops. A man who was a general foreman in one shop where operations were comparatively simple might not receive, by a $25 differential, as much as a foreman in a shop where the operations were complicated (Baldwin Rec. 349). The differences of pay of supervisory employees were similar titles are attributable "to the number of them they supervise, the type of work they supervise, the skill contained in the jobs of the men under them, and consequently the knowledge they must have of that work" (Baldwin Rec. 349-350).

One complaint about wages is that there is no adequate method of wage review. Witness Cavan for example stated that he "never had any grievance with any management in Baldwin's outside of wages" (Baldwin Rec. 123). If an employee has a grievance with respect to wages he can take that grievance through successively higher stages of management right up to the vice president's office. Generally there is a reluctance to go over the head of the immediate supervisor (Baldwin Rec. 73). However, Witness Cavan spoke to everyone up the line of management including Mr. Kelly, president of the Company (Baldwin Rec. 127). Witness Hughes states that when requests were made for increases the men only received promises (Baldwin Rec. 53). The men were also told that salaries were frozen (Baldwin Rec. 74).

The Panel is unable to determine from the evidence whether or not inequities resulting from improper classification or differential rates of pay do in fact exist. Since the hearing the Company has instituted a reclassification of supervisory employees and new rates of compensation. The Union has protested these changes. The matter is discussed later in this chapter.

4. **Failure to pay salaried foremen for overtime work.** Protest is made that premium pay is not given for overtime beyond 40 hours to salaried foremen. Foremen on a monthly salary are on a 48-hour week. The union requests overtime over 8 hours in any one day and in excess of 40 hours in any work week with time and one-half for

work on Saturdays and double time for work on Sundays and specified holidays (Union Statement 7). The Company concedes that in some instances the foremen do put in more than 48 hours when bottlenecks exist. It is usually a limited crew that works, and they trade off on overtime. The average overtime worked for the year was given as approximately one or two hours per week over the 48-hour schedule. It was thought superintendents might occasionally work 56 or 60 hours in a week (Baldwin Rec. 335, 336). Mr. Hughes, who testified that he worked about all but six Sundays, was in a bottleneck department and yet his time card showed that he worked only fifteen Sundays out of thirty-two (Baldwin Rec. 228, 229, 336). The Company witness stated: "This business of overtime is sometimes made necessary by the current man-power shortage. We do not want to work anybody Sundays, but if we cannot hire the men and cannot get the men and have these obligations to meet, we sometimes have to" (Baldwin Rec. 337). The management contends that salaried foremen are indirectly compensated for lack of overtime payments. They have offsetting benefits such as year-end bonuses, sick leave, and time off for personal business (Baldwin Rec. 333-334, 346). No evidence was offered that the Company in petitioning the Salary Stabilization Unit for salary increases had requested overtime for salaried foremen. The essence of the foremen's request is for overtime payments for time in excess of 40 hours per week. The Panel believes that this question should be decided in the light of area and industry practices. The best body to determine these practices is the Philadelphia Regional Labor Board. The Panel recommends that the question be referred to this agency.

5. **Failure to pay a night-shift premium.** The Union complains that the bonus of 10 per cent for night shifts applies only to assistant foremen and not to salaried foremen, assistant general foremen, and general foremen. The practice of the Company is said by management to conform to the practice in the industry and in the area (Baldwin Rec. 339). Since the decision on this point should be

governed by area and industry practice, the Panel recommends that this point be referred to the Philadelphia Regional Labor Board for disposition.

6. **Complaint that the supervisory employees are subjected to arbitrary discharges and demotions and that without seniority, grievance procedure, and collective bargaining they have no protection against high handed treatment** (Union Statement 8). This is a major complaint. The Union submits a number of statements of employees alleging arbitrary or discriminatory treatment. Although several are here presented to indicate the nature and types of grievances which have arisen, no effort is made to find whether these grievance are presently existing or are indeed valid. The Union has stated that it does not wish the Panel to find who was right or wrong. The Union contends only that a means of resolving such grievances must be agreed upon even if the grievance has no foundation in fact (Baldwin Rec. 354-357).

A Mr. Kilvington was fired after 38 years. He was not informed of this action in advance, but he came in one day to work as usual and found the men standing around in groups. Finally one of the men told him that at the production workers union meeting the previous night the president announced that he had been appointed to Kilvington's job and that Kilvington would receive 90 days' pay.

The Company introduced a statement from J. J. Nelson, vice president of the Foundries Division, in regard to this complaint. Mr. Nelson stated that it is not correct that Mr. Kilvington did not know why he was discharged. On several occasions Mr. Nelson visited the Small Brass Foundry and advised Kilvington that his production was not high enough. On one afternoon Mr. Nelson visited the Foundry and found that not one employee was working. He ordered that Mr. Kilvington be discharged and "a short time after this" Mr. Kilvington visited Mr. Nelson in his office and stated that he knew why he was discharged and bore no ill will whatever (Baldwin Rec. 294-6).

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Judson L. Locke and Mary A. Locke: Judson Locke complains of discriminatory treatment resulting from his activities in the Supervisors Union. He claims that a "get Locke" order has been issued, and that he has been demoted because of his activity. At the time he was head of the Special Squad, both he and the Police Chief were on the first shift. He was placed on the second shift because it was "for the betterment of the company." Since his demotion, however, both the Chief of Police and Supervisor of the Special Squad are both on the first shift. He also alleges that the reduction in staff was unjustified and that the letters referred to below from the War Department were bought.

Mary A. Locke, Judson Locke's wife, complains that the argument used that the reduction in the number of supervisors among the guards was made in an effort to save manpower and money is not valid since the jobs are still in existence and are being held by Acting Sergeants.

The Company introduced statements by Captain W. W. Johns and Chief Charles L. Strickland, of the Baldwin Police Force relating to the grievances of Judson and Mary Locke. The statement summarized the exchange of correspondence between the War Department and the Company relative to the reduction of the police force in order to release employees for production. Categorical denial is made of the allegation that these letters were bought. The statement ends:

> "In conclusion and rebuttal, Captain Wencil W. Johns and I, Charles L. Strickland, who are both members in good standing with the Supervisor's Union, American Federation of Labor wish to go on record and state that the charges preferred by both former Lieutenant Judson L. Locke and, his wife, former Desk Sergeant Mary A. Locke, are misleading and unfounded" (Baldwin Rec. 360-364).

T. H. Morton was allegedly summarily fired. No explanation was given. The case is now before the National Labor Relations Board on a charge of unfair labor practice.

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In regard to the grievance of Mr. Morton that he did not know why he was discharged, Mr. Holcomb stated that production was not as high as required in the Diesel Machine Shop. Management believed that this condition was due to the unbalanced supervision in that shop. There were four supervisors in addition to the foreman on the first shift and only one on the second shift. It was decided to move Mr. Morton to the second shift without either loss of title or salary. Mr. Morton objected to this assignment. He spoke to the assistant superintendent, the superintendent and the works manager, all of whom agreed that the reassignment was necessary. Mr. Morton then said that he resigned and his resignation was accepted (Baldwin Rec. 324-325).

A Mr. McGee complains that a man he supervised was shifted from one shift to another without his being informed. McGee discharged two men who were put back to work within one half hour elsewhere. McGee finally quit in disgust over his lack of authority.

Harry C. Hale was employed for 26 years by the Company. In March 1942 he was called into the office of Amos Cole, present works manager, commended for his work and given a bonus of $750. In August of the same year he was fired without explanation.

Leo Murset on April 15, 1944 at 3:45 P. M., was met by Mr. Woodall at the office clock where he requested Murset's button and, paid him off. Murset asked the reason and was told that it was because he did not get along with his men. Murset then went to the Yard Master, Mr. Thompson, and asked him why he was fired. Mr. Thompson said he did not know, but that the night foreman Mr. Peters had requested Murset's transfer. Mr. Peters was called in and he denied making any such request. Whereupon Mr. Woodall told Mr. Thompson that Murset was an agitator and that he, Mr. Woodall, did not want Murset any longer. Murset claims that he never had any trouble with his men.

The Company states that Murset asked for employment

in the shipping room claiming to have had experience. After several weeks he took the attitude that he did not have to work. The "A" shift men complained that the records were incorrect and the material was being checked on the wrong orders. This disorganized the entire crew on the "B" shift. Mr. Woodall complained of the man's work a number of times to Mr. Thompson. The material man on "A" shift also complained. Mr. Thompson then instructed Mr. Woodall to release Murset.

These among others were presented as illustrative grievances.

Mr. Holcomb explained that the approval of higher officials was required to discharge a foreman and that this was the general procedure. He stated further that any one who considers his discharge unwarranted may follow the grievance procedure to Mr. Holcomb himself (Baldwin Rec. 315). The Company has no objection to making this procedure known if it is not generally known. This witness knew of no effort by the management to determine whether or not the procedures were known to foremen. He saw no need to have a group of foremen present a grievance for one of their number. He disliked the idea, but he had received committees of foremen (Baldwin Rec. 317-318), and had no objection to meeting groups presenting their own grievances (Baldwin Rec. 318). A manual of instruction to foremen is under preparation (Baldwin Rec. 352).

Another grievance was that the disciplinary measures taken by the supervisors were frequently overruled. Thus Witness Hughes testified:

> Q. "If we eliminate the Union for a minute, could you discipline a man as you saw fit?"
>
> A. "Why, I could, but it would not do any good."
>
> Q. "Why wouldn't it do any good?"
>
> A. "Well, because I would not get the support: I would not get any backing up."
>
> Q. "From whom?"
>
> A. "From my superiors. I would not get any backing."

But later it developed that "in the large majority of cases," Witness Hughes' recommendations were followed. Again during the cross examination of Witness Cavan he stated that when recommendations for discipline were overruled it was probably due to the manpower shortage (Baldwin Rec. 114). Witness Cavan also stated that in the large majority of cases his recommendations have been followed. In the few cases in which Cavan's recommendations were overruled it took the form of lighter punishment. Witness Hughes assented to this statement (Baldwin Rec. 116).

7. **Complaints concerning seniority.** The complaint made here is that seniority postings do not credit some of the men with the full amount of time in service. Witness Wiley, Lieutenant of the Guards, stated that he has been credited with only 8 years of seniority when in fact he has been with the Company almost 12 years (Baldwin Rec. 106). The Union also asks that seniority govern in layoffs, promotions and demotions.

In discussing the Company's policy Mr. Holcomb stated that weight is given to seniority, but other factors enter into the evaluation of the supervisors prior to lay offs. Weight is given to seniority in making promotions and demotions (Baldwin Rec. 328-330). In many instances where the foreman was reduced to the rank of a production worker, full credit for all the time with the Company including his service as a supervisor was given. Although the C. I. O. contract does not make such provisions, it is the practice (Baldwin Rec. 330).

The union proposed straight seniority in demotions and promotions (union exhibit A. p. 3). But the Company objected to this clause stating that "It would mean that length of service, irrespective of ability or any of the other attributes that I have outlined, would govern. A man, by being there a long time, would gradually go up the ladder whether he was capable of it or not."

In regard to the specific complaints of Wiley and Cavan it was brought out on cross examination that when the

C. I. O. union and the Company agreed to a seniority provision, it was also agreed that the computation of seniority would arbitrarily be established as of 1939 and 1931 because the company's records were not in good shape prior to those years (Baldwin Rec. 101). Consequently employees working for the Company before those years would lose that time in the seniority listing (Baldwin Rec. 101).

But it was explained there are no seniority listings for supervisory employees. Where such employees are included in the seniority lists for other workers it is due to error on the part of the personnel office (Baldwin Rec. 371). The Panel's conclusions concerning seniority are contained in Sections XXVII and XXVIII of this report.

8. **Complaint that grievance procedure is inadequate.** Wage adjustments and the lack of grievance procedure appear to be among the most important grievances of the foremen. The Union asks for a grievance procedure terminating in arbitration in the event an issue is not settled in a mutually satisfactory way.

The present procedure may best be indicated by the following extract from the testimony of Mr. Holcomb:

> Q. "Now what is the Company's practice at the present time with respect to the handling of grievances of supervisory employees?"
>
> A. "A supervisory employee with a grievance carries the grievance to his immediate superior. He has the privilege of carrying it to his immediate superior, to carry it to the superior of that man, and that can go on, if we start at the lowest grade of assistant foreman, to the foreman, to the foreman's superior, who will probably be an assistant general foreman, or a general foreman; from him to the assistant superintendent; from him to the superintendent; from the superintendent to the Works Manager; from the Works Manager to the Divisional Vice-President; and from the Divisional Vice-President to myself. That, as a matter of fact, has in some instances been followed."

And again in response to questions by Member Calkins:

Q. "Is it necessary to go through all those steps before they reach you or your office?"

A. "If they would not go through all those steps, I would have to go back and check with their superiors, because with as many people as we have, Mr. Calkins, it is impossible for me to have any personal knowledge of the merits of any individual case."

Q. "But you would not skip any of those steps and go down to an assistant superintendent and get the information from him directly?"

A. "No; I might, if he had skipped the assistant superintendent, or I might ask the superintendent to find out why he skipped him, because the assistant superintendent might conceivably—"

Q. "How long a time would it take a man to carry a case clear to you under that kind of procedure?"

A. "He could do it in a couple of days if he wished to. We do not refuse to see these people, Mr. Calkins. The door to my office is never closed, nor are the doors—"

Q. "But they have got to go through a lot of doors to get to your office, apparently?"

A. "No, they do not; it is a general office and they can come right to it."

Q. "But a foreman would not be following your own grievance procedure if he came to your office without having gone to everybody between you and him?"

A. "He would do—that is correct."

Such procedure is too involved for the requirements usually demanded of an appropriate grievance procedure. The basic requirements for such procedure are simplicity and speed of handling. The Baldwin procedure does not provide for these essential elements.

The union proposes (Union Exhibit A) that grievances be handled in three steps.

1. The employee and a committeeman take the grievance up with the employee's superior.

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2. If not satisfactorily adjusted, the employee and committeeman would then take it up with a company representative.

3. If not satisfactorily adjusted at this level, it would then be submitted to arbitration.

In discussing this proposal Mr. Holcomb stated:

"I have two prime objections. In the first place the unit claimed by the Union covers five levels of supervision, so that in the first steps of this grievance procedure men would be requesting adjustments of their grievances from either the men who were members or who could be members of the same organization, a situation that would be completely intolerable to the Company."

"In the second place, the procedure as outlined provides for arbitration. The unit claimed or requested by the Union covers these five grades of supervision, and in my opinion, based on some thirty years of operating plants, if we had to submit to the judgment of an outside person without knowledge of our shop procedures or our methods of doing business, the operation of our shops, management would cease to exist" (Baldwin Rec. 297-298).

And further in regard to arbitration the following was stated:

Q. "What is the difference, in your opinion, between arbitration as the final step in grievance procedure in your contract with the Steelworkers, and arbitration as the final step in the grievance procedure for supervisory employees?"

A. "The occupations of Steelworkers are such that it is reasonably easy to determine whether or not the men are carrying out their duties, which are manual in character. Some planning and thinking is required, but it is easy to judge whether or not they are doing it. You can look at them and tell. In the case of supervisors, their jobs are of such a nature that intangible

things definitely enter into their success as supervisors" (Baldwin Rec. 298-299).

Mr. Holcomb objects to any procedure in which a group of employees attempts to handle grievances which do not affect them personally (Baldwin Rec. 318).

The Panel's discussion and recommendation in regard to grievance procedure is in Sections XXX and XXXI of this report.

9. **Miscellaneous grievances.** In effect the Union presented its demands in the form of a proposed contract. Certain demands not treated in the previous actions are summarized below with the comment of the Company on each. Little or no evidence or argument was offered or made by the Union on each of these demands.

The Union requested that leaves of absence be granted for a reasonable period of time during which the seniority should accumulate. The Company now grants leaves of absence up to six months. And greater periods may be approved by the Sala. y Administration Committee of the Company (Baldwin Rec. 331).

A request was made that leaves of absence be granted with full retention of seniority rights with reemployment in the same or equivalent positions for foremen going into military service. The Company generally grants such leaves. The veteran is reemployed if his job exists. If a foreman has been with the Company for one year or more, he is given a month's pay on induction.

The Union requested that supervisors receive two weeks' vacation, and that the compensation for hourly supervisors be 4 per cent of earnings as a vacation grant. Assistant foremen now receive one week after one year, two weeks after five years with pay at 2 per cent and 4 per cent of annual earnings. Foremen and higher levels of supervisors receive one week's vacation after service of six months to one year and two weeks' vacation after one year (Baldwin Rec. 338). This practice is said to conform

to the industry and area practice (Baldwin Rec. 339). The Panel recommends no change in vacation practices.

Sick leave of 30 days per year for all supervisors is requested. Employees of the rank of foremen and above are granted four weeks of sick leave. Beyond that it must be approved by the Salary Administration Committee. Hourly-rated supervisors receive no sick leave (Baldwin Rec. 340). The Panel makes no recommendation as to sick leave.

In addition there were minor issues such as bulletin boards, safety, and sanitation. These issues may be handled under the grievance procedure recommended in Section XXX of this report.

9. **Reclassification of foremen.** After the final argument on this case the Panel was advised by the Union that the Company was effecting changes in the relationship of foremen to each other through scheduled wage changes. This action was protested and the Board was requested to order the Company to maintain the status quo pending final action on the Panel's recommendations. In answer to a request for further information the Panel received on October 20, 1944, a letter from Mr. Hughes of the local union a statement of developments.

It appears that on October 14, 1944, the supervisory forces were called into the superintendent's office in each division and were there shown and had explained to them a chart setting forth the rearrangement of supervisory employees. The protest is in part that these changes were instituted unilaterally and arbitrarily without discussion with the foremen. Another protest is that the foremen and assistant foremen in abou 40 per cent of the cases were downgraded to assistant foremen and working leaders, respectively. In the old classifications, 409 men carried the rank of assistant foremen. The Company submitted a table to the Panel which shows that under the new classification 141 men will be classified as assistant foremen. One hundred and eighty-five assistant foremen become working leaders, and 26 assistant foremen become

workmen. Two hundred and seventeen workmen become working leaders or assistant foremen.

The reclassification involved the institution of new wage rates which were put into effect beginning October 23, 1944, and retroactive to June 1, 1943. The Company advised the Panel that of 626 men affected, 437 received increases in pay, 178 remained unchanged, and 11 received reductions in pay.

Working leaders are covered by the contract of the Company with the United Steelworkers which represents the production and maintenance employees in the Eddystone Works. The job reclassification was under discussion with the United Steelworkers since June 1943. Negotiations with the Steelworkers concerning the inclusion of working leaders in their contract began in July, 1943, before the supervisory forces were organized by Lodge 91. The Company states that, because of the tremendous expansion of the work force at Eddystone and the necessity of hiring many inexperienced people, a large force of assistant foremen, who did not do production work, were needed. Now that the work force had ceased to expand and the training program has been completed, the necessity for a large force of assistant foremen, who are not allowed to do production work, no longer exists. The reclassification plan, after negotiation with the United Steelworkers, was approved by the War Labor Board of Philadelphia on August 2, 1944, under case #3-23032.

This dispute was discussed by the Board in Washington in executive session on December 2 and 8, 1944, and it was voted to refer the matter to the Conciliation service.

XIII. **Bohn Aluminum and Brass Corporation.**

1. **Background.** This corporation operates 14 plants, one of which is at Adrian, Michigan. Unit No. 24, involved in these hearings, is an aluminum extrusion plant which was placed in operation on March 15th, 1943, before it was fully completed. Cut-backs began in December, 1943. On the fifth of that month there were 51 foremen,

set-upmen and instructors, whereas on July 28th, 1944, there were only 26 foremen, and no set-up men or instructors. Due to the expansion of the operations a large number of the supervisory staff was new, some of whom had removed from Detroit (Company Statement p. 6).

The Foremen in the Bohn Aluminum and Brass Corporation at Adrian, Michigan organized and received a charter (No. 66) from the F. A. A. on December 13, 1943. Shortly thereafter (December 18) five foremen were discharged according to the Company for reasons of cutbacks and competence (Company Statement p. 6). On December 21 twenty-eight foremen walked out. On the same day the Association requested a conference with management to discuss wages, hours and conditions of employment of foremen (Detroit Rec. 840). Seven men returned to work. The case was certified to the Board on January 3, 1944. The Association thereupon ordered the striking foremen back to work, but when they reported for work, they were advised that they were discharged. The Association seeks the reinstatement of the men discharged. That case is now pending before the N. L. R. B. It is not entirely clear what the Association seeks from the Board through the Panel since none of its members are now employed by the Company. (Detroit Rec. 853), although it cites the case as evidence of the need for grievance machinery by which wage and other grievances may be settled (Detroit Rec. 849-854). The Company says 8 foremen and 10 set-up men instructors and others, who left their jobs on December 23rd, have not been replaced (Company Statement Page 7).

Witness Jackson, for the foremen, testified that the men attempted twice to return to the plant (Detroit Rec. 873). Only two witnesses appeared for the Foreman's Association, and neither of these was then employed at the plant. Cases involving discriminatory discharges were pending before the National Labor Relations Board when the hearing on this case was held (Detroit Rec. 848-850). Counsel for the Foremen declare that the men are not asking the Panel to reinstate them (Detroit Rec. 848), and that he is presenting witnesses only so that the Panel may be in-

formed of the type of grievances that existed before the discharges of December, 1943 (Detroit Rec. 854). A telegram from the National War Labor Board dated June 16th, 1944, advised the foremen that the case was being returned to the United States Conciliation Service; but this referral did not preclude the case being heard before the Panel (Detroit Rec. 851).

2. **Rates of pay.** The evidence on this subject is scanty. All foremen were paid on a weekly salaried basis, the range thereof being from $60 to $85 (Detroit Rec. 830). There was a somewhat higher salary paid to the supervisors who moved from Detroit, and a raise of $5 was given to them (Detroit Rec. 832). Witness Boone, however, says he was promised a raise but did not get it, and this, he says, was one of the reasons why the foremen organized. The Company on its part contended that the rates of pay were well in keeping with the rates for similar work paid in the Adrian area (Statement Page 8). On the showing the Panel must find that the foremen have not established that salaries paid to foremen in the Adrian Plant were inadequate.

3. **Differential between rates of pay of foremen and of those working under them.** At first some of the supervisors were paid on an hourly basis as well as on salary, but this was changed and all foremen were placed on salary (Detroit Rec. 830). When the foremen were paid on an hourly basis some of the hourly-rated supervisors received more than those on salary; due, of course, to overtime. It was said that some men on incentive rates received more than the foremen, but not "very many of them" (Detroit Rec. 884). The Panel's views on the differential between the compensation of foremen and those working under them are given in Section XXIV of this report.

4. **Overtime: Sunday and holiday work.** It is said that when men were brought from Detroit they were promised a 48-hour week, but when they arrived at Adrian they

found a minimum week of 60 hours. Sometimes the work week was 75 hours, but there was no pay for the extra time (Detroit Rec. 875, 876). It was said that the daily hours were at first 9 hours, then 10 hours, then back to 8 hours; but there was no overtime compensation and no premium for Sunday work (Detroit Rec. 836).

5. **Demotions, discriminations and grievance procedure.** These subjects must be handled together because the witnesses did not differentiate between them. The episode at the Bohn Aluminum and Brass Corporation concerns, according to the witnesses, improper demotions including discriminatory discharges, and an entire lack of grievance procedure.

Trouble started when a foreman, "Red" Boone, who had been transferred from Detroit was "fired" (Detroit Rec. 833). Next day the foremen organized to get some kind of "protection" (Detroit Rec. 834). At the time Mr. Boone was discharged three other supervisors were "fired", as not being capable foremen (Detroit Rec. 839). Mr. Frost, the Plant Manager, when questioned by a group of foremen about the discharge of the four, said that the four who were fired were incompetent, and that he, the Manager, was going to fire some more (Detroit Rec. 867).

The position the Company has taken in regard to the discharges is that cut-backs had commenced, and two foremen and two set-up men were discharged on December 18th because they were not competent to perform their duties; that because of the reduction in the government program the Company intended to retain only its better supervisors. The Company asserts that there was no demand of any sort for a settlement of grievances made by the foremen until after the discharges of these four men (Statement 7).

One thing that was discussed, but only incidentally, was the question of seniority. The foremen were bothered by the fact that there was no mention of seniority in the C.

I. O. contract with the rank and file. As a result Foreman Boone upon being discharged had lost his seven years seniority as a member of the rank and file (Detroit Rec. 886).

The foremen claim that the discharges that took place were acts of discrimination for union activities (Detroit Rec. 838, 839). Counsel for the foremen claimed that all members of the Foremen's Association have been released from employment at Bohn's, as have also a time study man and a superintendent who had given signed statements to the National Labor Relations Board (Detroit Rec. 853). Mr. Frost, the Plant Manager, said that Mr. Boone was not fired because of his union activities, but because he was not a competent foreman (Detroit Rec. 865). The foremen say "Red" was one of the best supervisors the Company had (Detroit Rec. 866). One foreman who was discharged (Mr. Carl Lapello) had telephoned Witness Jackson on the day of the strike, and said that the non-union foremen were getting the gravy; the others were getting dirt (Detroit Rec. 868). The Association claims that when the rank and file go on strike they afterwards return to their jobs; but not so the foremen (Detroit Rec. 898). The position of the Company is that it does not intend to recognize or bargain collectively with its foremen or negotiate grievances. It claims that the foremen quit their jobs, and for that reason they are not being rehired (Statement 12, Detroit Rec. 898).

There is no grievance procedure at this Plant except that the Company says an individual may take up any matter with his immediate supervisor or with top executives (Statement 12). The Association demands a grievance procedure (Detroit Rec. 848-850). Counsel for the foremen said: ". . . as a matter of record, what case could we present to you that would indicate the need of grievance machinery any better than this one right here?" (Detroit Rec. 850).

The Panel finds that the foremen at Bohn's, when the strike occurred, were dissatisfied over their wages, the

lack of overtime pay, and lack of a grievance procedure.[1] As of the present time there are unresolved grievances concerning the Bohn Plant, in that the alleged discriminatory discharges of more than a score of supervisors because of union activity are not settled. These cases have been certified to the National Labor Relations Board and were there pending at the time of the hearing. This Panel through its referral is not authorized to rule on discriminatory discharges. As to other matters the evidence is too meager to make findings.

XIV. Briggs Manufacturing Company

1. **Background.** Four plants of the Briggs Manufacturing Company are involved in these disputes. They are the Hamtramck Plant, the Mack Avenue Plant, the Outer Drive Plant, and the Shoemaker Garage Division. These plants are engaged solely in war production, making aircraft parts. They employed at the time the dispute was certified (November 1, 1943) about 713 supervisors who supervise the work of about 18,500 hourly rated employees.

The foremen of the Briggs Manufacturing Company organized late in 1941 or early in 1942 and received a charter from the Foreman's Association of America on February 16, 1942. This was the second charter issued by the Association. The Association requested a conference with the Briggs management for bargaining purposes on May 4, 1943. The request was refused. A similar demand on June 4 was refused. On August 30, 1943, the Association sent the management a letter of complaint setting forth eleven specific grievances. This letter, being characteristic of those sent to other companies on the same date, is reproduced in Section II of this Report. It specified grievances concerning: recognition; reinstatement of a discharged employee, seniority; sick leave; temporary adjustments in pay; voice in demotions, promotions, and transfers; negotiation over policies; inequalities of pay;

[1] There were other grievances of a minor nature. The foremen assert the Company was pushing or riding them (Detroit Rec. 833), that there was a lack of executive direction—no system (Detroit Rec. 835), repeated changing of hours and the like (Detroit Rec. 836).

classification of supervisory employees; number of foremen and territory to be supervised; and bonus for night shifts. On October 7, 1943, the Association informed the Company it had filed a thirty-day strike notice under the provisions of the War Labor Disputes Act (Briggs Ex. 18). The dispute was certified to the War Labor Board on November 1, 1943.

2. **Rates of pay, general.** It does not appear from the testimony that there is any great criticism of the rates of pay of the foremen. The average monthly salary of the foremen based on a 40-hour week is $284.18 but, since the foremen average 51 hours per week, the average earnings are $415.90, which compares favorably with salaries elsewhere in the area (Company Ex. 6). In answer to a direct question as to whether the salaries were high enough for the work they do, Witness Quatro answered rather equivocally. He said: "Well, I don't think they are. Some of them are, but some aren't. . . ." The witness then proceeds to discuss lack of uniformity as between foremen performing the same work (Detroit Rec. 343).

3. **Lack of uniformity in the compensation of various foremen.** Mr. Quatro cited several cases and claimed a difference in salaries comparing his own compensation with that of other foremen. For example, he referred to J. Tamosunias who is receiving $325 a month whereas he, the witness, received only $289 (Detroit Rec. 43). The Company pointed out that this particular foreman was responsible for the setting of all the dies at the Mack Plant and had been with the Briggs organization ever since it had used dies (Detroit Rec. 2265). Witness referred to Foreman Larose, apparently stating that Mr. Larose, who did the same work as the witness, received more money (Detroit Rec. 344). The Company (Detroit Rec. 2264) said that Mr. Larose receives $289. Witness said that two men in the same department got $260, six men got $250, and two men got $225. These are all in Department 64 (Detroit Rec. 344). The witness referred to several other cases and pointed to discrepancies as between rates of pay.

The Company concedes (Detroit Rec. 2256) that it does not have a standardized wage plan for foremen. The rates of foremen vary with the technical training necessary for the job, the foreman's experience, the number of men under his supervision. The Company indicated (Mr. Taylor's testimony, Detroit Rec. 2254-2258) that there is a difference in the responsibilities imposed upon the foremen and that their rates of pay differ in accordance with their abilities, and said that the pay a man receives is related to the number of men under him and the type of work being performed. Mrs. McCann, who was a forelady in the assembly line, received $260 a month (Detroit Rec. 374) whereas male foremen received $289 (Detroit Rec. 375). The witness said that she broke in most of the foremen working in the department. The Company replies that the workers under Mrs. McCann apply the fabric to the wings (Detroit Rec. 2283) and that there are no male foremen supervising this kind of work (Detroit Rec. 2283). In like manner the Company explained or commented upon each difference in pay and described a reason therefor.

The Panel has no way of measuring the respective abilities of foremen. The determination of the precise rate to pay its supervisory employees is considered to inhere in management. The Panel does not believe that the Board should consider the absence of a standard wage schedule for foremen in itself a justifiable grievance, although the absence of a standard wage scale may involve inequalities which become the basis for grievances.

4. **The differential in the rates between the supervisor and the workers under him.** This does not appear to be a grievance in the Briggs Plants. There was no testimony that any foreman at the Briggs earned less than a man working under him for the same number of hours of employment. The Company's evidence was to the effect that in the past, when production employees received raises, equivalent advances were given to supervisors (Detroit Rec. 2254) and that there had been two increases granted the supervisors, one had been of 10 per cent and another of 5 per cent respectively. On June 1, 1941, a 10-per cent

increase was made and on December 1, 1942, a 5-per cent increase was granted (Detroit Rec. 3029). The Company's witness claimed that salaried foremen received not less than 25 per cent more than the average of the rank and file. Occasionally the rank and file worker with not a great deal of experience is made a supervisor and, until he develops, his salary may be relatively out of line (Detroit Rec. 2101). The Company's Exhibit 6 shows that, based on a 40-hour week, the average foreman received $1.63 on an hourly basis and the employees $1.13, this being a 44 per cent differential in favor of the supervisor. Inasmuch as the employee averaged 48 hours a week and the foreman 54 hours per week, the differential in favor of the foreman on an average earnings is 65 per cent. The average earings of the foreman are $415.90 a month and the earnings of the employee on the same basis are $251.22.[1]

5. **Overtime, Saturday and Sunday work.** On December 1, 1942, the Company adopted a seven-day work week, commencing Monday morning. With one slight exception, the foremen and the rank and file receive the same treatment. Although on salary, the foremen receive time and a half for work in excess of forty hours a week and double time on Sunday if the Sunday is the seventh day worked. Foremen do not receive overtime for work over eight hours in any one day as do the rank and file, but only on time beyond forty hours. It is pointed out that since the work week is over forty hours, the practical application of the policy places the foreman on the same basis, in so far as overtime is concerned, as are the men (Company Exhibit 10, 342).

The matter of overtime is not a grievance for a foreman at the Briggs Company. Witness Quatro said the Company had been very fair in handling overtime compensation (Company Exhibit 10, 343).

6. **Christmas bonus.** The Briggs foremen do not receive any bonus for work based on production, but they do

[1] It is interesting to note that in the formal demand sent to the Briggs Manufacturing Company on August 30, 1943, there was no grievance set out as to rates of pay. Item 7 relating to the refusal of the Company to rectify rate of pay inequalities by negotiation; there was no mention of a lack of differential in pay rates as between supervisors and workers.

receive sums of money such as five or ten or twenty dollars at Christmas time.

Mr. Quatro said they were never told how this bonus was computed (Detroit Rec. 421). The Company in explaining the item said that any employee with less than a year's service who is on the payroll on December 1st of each year shall receive five dollars and that men in service for over one year but less than two years, receive ten dollars, and every supervisor of two years or more receives twenty dollars. This is given only to members on salary and appears to be an old time custom dating back to Walter Briggs (Detroit Rec. 2237).

If there is any criticism relating to this Christmas gift it is that the men did not know how it was computed.

7. **Delays in having a raise come through.** Testimony was given that when a foreman is promoted to be a general foreman with a promise of a higher pay, it sometimes takes months for the raise to come through. Mr. Quatro said he didn't get a promised raise for ten or eleven months (Detroit Rec. 335). He referred to other foremen promoted to be general foremen, namely Charlie Young and Harry Best. They were promoted but didn't get the raises until months later (Detroit Rec. 336). This was a grievance amongst the foremen. Witness Sopa claims that he was promised a raise if he took a higher rating and went to work nights (Detroit Rec. 366). He did not get his increase (Detroit Rec. 367) and later was transferred to another plant (Detroit Rec. 368).

Witness Pietrowski says he was requested to take on the duties of a general foreman. He was promised a raise of $50 which was supposed to go into effect on the first of March (Detroit Rec. 404) but it didn't become effective until the 15th of May and was then $15 short (Detroit Rec. 404).

The Company answered as to Mr. Quatro that the department was having trouble under the Wage Stabilization Program (Detroit Rec. 2261) and although his superintendent recommended his raise, it was not immediately

granted (Detroit Rec. 2262). The Company was unable to locate any record for Charlie Young (Detroit Rec. 2263) perhaps because there was an error in the name in the transcript. Mr. Best, the Company said, had never been classified as a general foreman. The Company denies any specific raise was promised Mr. Sopa (Detroit Rec. 2279) or Mr. Lee (Detroit Rec. 2286). It is claimed that it is not the policy of the Company to make definite promises until the increase has gone through channels and cleared through the stabilization unit.

Delay in receiving a promised raise is bound to irritate the promisee and constitutes at least a minor grievance. The Panel understands that there was difficulty in working out procedures under the Wage Stabilization Regulations and the time must intervene between the suggesting of a raise and its accomplishment. The complaints arose during the period in 1942 and 1943 when foremen were being promoted to general foremen. If there are unresolved grievances at the present time over delays in handling raises, this record contains no evidence of them.

8. **The issue of seniority.** Witness Quatro, President of the Briggs Chapter of the Foreman's Association of America, asserted in strong language that "seniority is not recognized at all in either demotions or promotions" (Detroit Rec. 8). The evidence presented by the Foreman's Association in support of this strong statement is meager. The company asserts that the predominating factor and the one given first consideration in making promotions or demotions is ability. Nevertheless, the company by testimony and by statement of policy set forth in Exhibit 7 asserts that the policy of the company has always been to consider seniority when promoting or demoting foremen. Witness Taylor, the Personnel Director of the Company, described the procedure in the case of promotions and demotions (Detroit Rec. 2104-2106) and pointed particularly to the way in which the company absorbed the supervisory staff at the Highland Park plant where operations were greatly curtailed during the years 1938 to 1940, and eventually discontinued in 1941. Virtually the entire manage-

ment personnel of 179 foremen was absorbed in other Briggs plants (Detroit Rec. 2108). The view of the Panel concerning the recognition that should be given to seniority in selecting supervisors for demotions, transfer, layoff, or promotion are given in Sections XXVII and XXVIII of this report.

9. **Demotions, transfers and discharges, and lack of a grievance procedure.** The foreman referred to several cases of demotions and their complaints, related particularly to the arbitrary manner in which demotions or discharges have occurred. Witness Quatro read a statement or grievance of Oliver Sopa (Detroit Rec. 358), and Mr. Sopa testified himself. In the statement, Mr. Sopa said that in 1941 when a reduction of supervision took place, he was reinstated at an hourly-rated job and that since that time he had to work himself up again as a foreman, and he feels that his position as general foreman is insecure in that it can be taken away at a moment's notice (Detroit Rec. 359). In answer, the Company said that during his work in assembly production he occupied a minor position and had no mechanical experience whatsoever. When automobile production ceased, he was advised to take a training course or an inspection course and he is now in inspection. He is considered a beginner in so far as management is concerned.

Mr. Pietrowski was a foreman for about seventeen months, was discharged, and was allowed to go over to the Mack Avenue plant on day rates (Detroit Rec. 380). He says he couldn't find out why he was discharged beyond the reason, "inefficiency". It developed: he was advised by the foremen's personnel officer that he was supposed to make thirty-five units of the hand controls used to operate the lower ball turret on aircraft (Detroit Rec. 381) and that he had never been able to produce it. Mr. Nowicki was also discharged at the same time (Detroit Rec. 382) and the witness says he and Mr. Pietrowski were replaced by four foremen. Witness said that at the close of the shift he was told "You are all done; get your time," by the general foreman (Detroit Rec. 385). The assigned reason was failure to produce thirty-five units. Witness

said he had never been reprimanded until the time that the plant superintendent told him "You are all through" (Detroit Rec. 392).

As to the demotions of Frank Nowicki and Anthony Pietrowski, the Company made a detailed answer in Exhibit 14. The answer of the Company, if true, sufficiently justifies the action taken for both foremen. It is a record of negligence, inefficiency, and inability to produce. In addition, there were complaints that the foremen could not maintain discipline among the employees. The Company's exhibit shows 1456 units produced during the 60 day period preceding the removal of the foremen, and 1969 units produced in the 60 day period after their discharge, and it is reported that the man-hours required to produce each unit were decreased. As to the extra foremen hired, the Company said that the shift was split.

Joseph Sabula was removed from foremen's classification and directed to report as a welder on September 16, 1943. The next day when he came to work, a group foreman tried to meet with Management but was not able to find out why Mr. Sabula had been taken off the job. There was a demonstration for a period of some twenty minutes or so but the foreman went back to work. The Company in its Exhibit 12 set out the reasons for Mr. Sabula's demotion. Five hulls had been rejected by the United States Army officer because they had been welded with the wrong melt wire. During the night shift, Mr. Sabula had removed the tags from one of the hulls and placed it on the line, contrary to direct orders.

In the demand served on the Company on August 30th was a request for the reinstatement of John W. Tewsley. The answer of the Company is set out in its Exhibit 13. It is a record of inefficiency.

The Foreman's Association did not attempt to rebutt the company replies in the case of Sopa, Pietrowski, Nowicki, and Tewsley. On the basis of the record the Panel is unable to find that the company acted without justification. These cases, however, illustrate the need for more adequate arrangements for settling grievances such

as the Panel recommends in Section XXX of this report. The company may demote a foreman with ample reason, but adequate arrangements by which the matter may be discussed and the case clarified for the men and also for his associates among the foremen, are needed.

10. **Grievance procedure.** The Association asserts that there is no method of discussing grievances of any kind at the Briggs Plant except to have the individual concerned take the matter up with his superior. Formerly, it is true, there was a foreman's conference wherein matters relating to safety and the like were discussed and Witness Quatro says that at a meeting of this conference methods of raising grievances were discussed (Detroit Rec. 336). The assistant of Mr. Taylor, the Personnel Director of the Company, told Witness Quatro that the foremen were supposed to go to the general manager, but the witness said that the manager put him off (Detroit Rec, 337, 339).

Witness Nowicki was discharged and some of the foremen protested. Following the protest the witness was offered another job. Witness later had a job in the Mack Avenue Plant (Detroit Rec. 395) and he himself had protested to one of his superiors and was told that nothing could be done about the discharge.

Foreman Lee was one of the foremen who protested an unreasonable discharge, and he says he was told by the factory manager to go back to work (Detroit Rec. 402). He says that later on he was called into the office and questioned about the Foreman's Association (Detroit Rec. 402). Witness says the only adjustment of a grievance is to talk to your superior (Detroit Rec. 404). The company points out that Mr. Hopkins serves as a personnel man for the foremen and hears foremen's grievances (Detroit Rec. 410).

Witness Quatro stated that Mr. Taylor, the personnel director, told him that if a foreman cannot speak for himself he did not have the right to be foreman and that at no time could more than one man talk to Labor Relations (Detroit Rec. 411). At no time was a committee permitted

to meet with Management (Detroit Rec. 410). Witness Quatro complains that Mr. Hopkins listens to the grievance and then says he will see what he can do about it and that is about as far as the matter goes (Detroit Rec. 413). Mr. Quatro said that he did not know of any personnel director for the foremen, and this witness attributes the walkout in April to failure of the Management to discuss discharges and because foremen could not get any redress (Detroit Rec. 422).

Witness Taylor, the personnel director of the company, elaborated somewhat on the machinery of handling foremen's complaints. Each plant has a personnel representative reporting to the plant manager and indirectly to the Labor Relations Director. These men are in contact with the foremen daily, the foremen with their general foreman and with the superintendent (Detroit Rec. 2143, 2145). Witness Taylor testified that prior to the campaign for membership put on by the Foreman's Association of America, there had never been any complaint on the part of the foremen because of a lack of grievance procedure (Detroit Rec. 2145). Witness had made an inquiry as to whether any personnel officer had ever received a request from a foreman to set up a grievance machinery and found that he had not. The following questions and answers succinctly state the present position of the Company:

> "Q. Is your company willing to handle complaints of foremen with a committee or group of the F. A. A.?
>
> A. We are not.
>
> Q. Why?
>
> A. That would be collective bargaining." (Detroit Rec. 2147).

Elaborating, the witness said that any organization is interested in itself, not in the individuals composing it and that Management was unwilling to deal with any group of foremen which represented foremen in other plants (Detroit Rec. 2148). Mr. Taylor reiterated the remark attributed to him by Witness Quatro by saying (Detroit Rec. 2240) that if a supervisor was timid in expression or could not state his own position and his desires, Management had made a mistake in promoting him. The management

of Briggs Manufacturing Company regards all forms of grievance procedures as collective bargaining and will not have any of them (Detroit Rec. 2165). The Foreman's Association regards the lack of grievance procedure to be in itself an unresolved grievance.

The Panel finds that whatever procedures the Company has provided for handling grievances have not been effective in resolving grievances of the foremen, nor have they been effective in settling misunderstandings. The Panel's recommendations concerning grievance procedure are set forth in Section XXX of this report.

XV. The Chrysler Corporation.

1. **Background.** Only one of the many plants of the Chrysler Corporation, the DeSoto-Wyoming plant, is involved in these proceedings. It is engaged exclusively in war work. Before the war the DeSoto-Wyoming plant employed about 3000 people including 60 or 70 foremen. Today it has over 7000 employees and about 225 foremen (Detroit Rec. 1395, Company Exhibit No. 5). The Chrysler Chapter of the Foreman's Association of America was chartered September 22, 1942. In November, 1942, it requested a conference as bargaining agent for foremen of the DeSoto-Wyoming Plant. The conference was refused and the officers of the Association were advised that the management did not believe the Association represented a majority of the workers or that it was proper for supervisors to organize or bargain collectively. The Association's request of January 5, 1943 to the National Labor Relations Board for certification as bargaining agent was not heard and on June 29, 1943 the notice of hearing was withdrawn.

A letter of complaint dated August 30, 1943 was sent to the Company stating twelve grievances. With minor variations the letter presented essentially similar grievances to those in Briggs. The discharge of Foreman Lusn was protested September 21, 1943. On October 6, 1943 the Foreman's Association of America filed a strike notice under provisions of the War Labor Disputes Act. No

election, however, took place, the notice apparently being withdrawn. The dispute was certified to the War Labor Board on November 1, 1943. A public hearing on the jurisdiction of the Board was held in Washington January 6, 1944.

On January 13, 1944, without notice and without an election under the War Labor Disputes Act, the foremen at the Desoto-Wyoming Plant went out on strike. Two days later they also went out in other plants of the Company, but those plants are not here involved. The reason given for the strike by the foremen was the demotion of a foreman named Bond to the position of job-setter. Consequently the nominal cause of the strike was not the issue which led to the certification of this case to the War Labor Board. The men returned to work on January 21, 1944, no conferences between the Foreman's Association of America and the management having been held. On that day Mr. Bond quit his job as a job-setter. The foremen at Chrysler did not join in the strike of early May, 1944, when foremen in six other companies in Detroit went on strike.

2. **General level of compensation.** On the whole there does not seem to be any serious contention that the base rates augmented by the 30 per cent bonus received by all foremen for overtime work are inadequate. The complaints concern rather a lack of uniformity in the application of the rate structure with a suggestion as to discrimination between supervisors. Some irritation was expressed that a raise once promised is slow in coming through, but generally the grievances concern matters incidental to the wage schedule rather than the sufficiency of its money levels.

It is shown in the Company's Exhibit 5 that since January 1, 1941 general foremen have received an increase of 47.4 per cent, the foremen 52.7 per cent, or together an increase of 48.9 per cent. Since these figures include the 30 per cent bonus the advance in base rates has been about 20.1 per cent (Detroit Rec. 1754).

While Foreman Elliott admitted the foremen would like

more money, no effort was made to show the salary schedule to be out of line as compared with rates prevailing in the industry in the Detroit area, or that it was otherwise inadequate. Salary ranges, including bonuses, are from $3500 to $5500 per year for foremen, and $4200 to $6000 a year for general foremen. At the outset of its brief the Company compares these earnings, supplemented by a two weeks vacation with pay and a cash bonus of about $100 (paid at or about the time a supervisor takes his vacation) as well up to those of many civil servants and men in professional or business activities. It is a fact commented on elsewhere that foremen, as a class, are in the upper one-third of the national income bracket.

3. **Alleged lack of uniformity in compensation of different foremen.** Witness Elliott for the foremen read a statement of Foreman Stafford showing varying rates of pay as between foremen, including himself. This, said Witness Elliott, was a characteristic and prevalent state of affairs about the DeSoto-Wyoming plant (Detroit Rec. 49). Later in his testimony Mr. Elliott elaborated. First he would have a "lining up" of all salaries on the basis of some going rate in the department, and after this straight classification is made, he would seek to secure some further compensation for the exceptional man.

The only case coming to the attention of the Panel was that set out in the complaint of Mr. Stafford, and even though the figures be accepted, there was no sufficient showing that the capacities of the several men were equal and no evidence as to their respective job responsibilities or performance. Indeed what little proof there is would tend to show a marked difference in skill.

4. **Lack of adequate confirmation for overtime, and for Saturday and Sunday work.** Foremen report at the same time as the maintenance and production workers they supervise. They work the same hours; but the Union asserts they stay later, and they work Saturdays without premium compensation and Sundays without any pay at all (Detroit Rec. 36). Specifically, Foreman Marshall requests

pay for overtime he claims to have put in from December, 1941, through 1942. He says, in a grievance filed with the Association, that he worked sixty-eight hours a week to March, 1942, and was paid on the basis of a forty-hour week, and thereafter he put in the same hours on a forty-eight hour week basis (Detroit Rec. 37). His (and other foremen's) overtime was occasioned because of nightly conferences and extra time required to finish his job (Detroit Rec. 38). The practice of after-work conferences, which appears to have been necessary for the proper performance of a supervisor's work, caused a "lot" of complaints to come to the attention of the Foreman's Association (Detroit Rec. 39). These conferences concerned ways and means of boosting the production of the Bofors gun (Detroit Rec. 39).

Foreman Elliott testified that, on straight salary he has in the past worked from seven o'clock in one morning until one o'clock the next, and that in the opinion of the witness, nearly all of the 225 foremen in the plant had experiences in the last few months like those of Mr. Marshall (Detroit Rec. 45).

A form of overtime especially irritating to salaried employees is work on Saturday and Sunday. At one time lunch money of 60 cents was allowed, but this practice has long since been discontinued.

Until August 1941, the Company paid no special compensation to foremen for overtime. In August, 1941, the Company began to pay 20 per cent additional to foremen and general foremen who worked six days a week, because in some departments defense work then required a six-day week. On June 16th, 1942, when the plant went on a six-day week, salaries of all foremen were advanced 30 per cent (Detroit Rec. 1755, and Brief of Company, 21, 22). No pay, as such, accrues for Sunday employment, but if a foreman works on that day he is directed to take a day off in the ensuing week (Detroit Rec. 43). By substituting a week day for Sunday, premium pay to a supervisor who has worked on the holiday is avoided.

The Company's evidence discloses that on the average

the supervisors are not called upon to put in an undue amount of overtime (Company Exhibit 6 sets out the average), amount of time (in hours) worked by foremen from January 1st, 1941, to June, 1944. In summation, by years, it discloses that in 1941 the foremen averaged 170.1 hours per month or 39.3 hours per week; in 1942, 47 hours per week; in 1943, 48.1 hours per week; and January, 1944, to June, 1944, 47.6 hours per week (Detroit Rec. 1755). In the Company's figures Saturdays and Sundays are treated as ordinary days of the week.

Since the exhibit relates to **averages** the proofs of the parties do not clash. It is possible that what Foreman Marshall wrote and what Witness Elliott said may each be true. The average is high, and some foremen probably work considerably longer hours than do others. Giving the effect most favorable to the Company Exhibit 6 shows that, **on the whole**, the supervisory force does not put in excessive hours.

In the time at its disposal the Panel could make no study as to the hours of work of individual supervisors at the DeSoto-Wyoming Plant, the Association could not do so because it had not access to the records, and the Company furnished averages, not detail. It may be that for an undisclosed number of foremen the question of time spent at work above the average required of their fellows is an unresolved grievance. Such cases may be rectified under the grievance procedure recommended elsewhere in this report.

The practice of treating Sunday work as straight time with a compulsory holiday in the ensuing week applies to all supervisory personnel and some of them complain of it. To require that foremen be paid premium time for Sunday work, regardless of whether or not Sunday is the seventh consecutive day of work, would be to accord them preferential treatment compared to the rank and file who are subject to Executive Order 9240. Furthermore, the Panel has been given no evidence that the assignment to Sunday work has been abused. Consequently the Panel makes no recommendation concerning the present practice.

Board's Exhibit No. 19

5. **Complaint that some supervisors earn less than some of the workers supervised by them.** There was read into the record the names of several supervisors and the amount of their annual earnings as well as similar data for employees working under them (Detroit Rec. 46, 47). The figures as such were not disputed, and Mr. Elliott testified that cases of workers earning more than their supervisors were prevalent in the DeSoto-Wyoming plant. Both parties agree that it is sound policy to pay foremen more than those who work under them (Company Brief 21). But no general finding can be made as to the claimed grievance. The Company's Exhibit 7 shows the comparative annual earnings of supervisors and workers. The hourly rated employee received on the average $2,975 during the year ending June 1, 1944 **whereas** the foremen received on the **average** 36.2 per cent more and the general foremen 57.3 per cent more than he did. Both foremen together received 40.1 per cent more than the men under them (Detroit Rec. 1758). The Company in its brief says its policy has been to pay foremen at least 25 per cent more than the weighted average of the men under them (Detroit Rec. 21).

It is noted elsewhere that figures based on averages do not negative the existence of substantial inequalities. The material furnished the Panel does not show that **for equal hours** spent on the job the supervisor receives less than the employee under him, and the Company asserts with confidence that such is not the fact (Company Brief 36). The Association admits there is no grievance if the reason the worker makes more money than the foreman is because he works longer (Detroit Rec. 1624).

It is possible that here and there in the Plant there is some situation which requires rectification, but the proofs do not show any specific instance which constitutes a serious grievance. If any instances exist, they may be handled under the grievance procedure recommended by the Panel in Section XXX.

6. **Complaints concerning the annual bonus.** Little time was spent on this subject. The company gives an annual

bonus to supervisors which, it says, is individually determined (Detroit Rec. 1772) and which varies as between foremen and which varies from year to year. Mr. Elliott, witness for the Foreman's Association of America, said he received in different years sums ranging from $100 to $125 and that other foremen in his department received as high as $175. The objection is that no one seems to know how the system works (Detroit Rec. 163). The bonuses are not a part of the regular monthly compensations and are not directly connected with the performance of the foreman's department in quantity, quality, safety, or like matters. These bonuses while considered wages for certain purposes, are in reality more in the nature of a gratuity. The employee has no contractual right to enforce payment. The Panel comments in general terms upon the problems of annual bonuses in its General Conclusions, Section XXIV.

7. **Complaints over loss of night shift premiums when foremen are transferred from night work to day work.** Foreman Elliott said when he was transferred from a night shift to the day shift he no longer received the premium paid for night shift work. It is not clear whether the witness raised the point as a grievance, or to illustrate a loss of pay incident to a raise promised but deferred in realization (Detroit Rec. 242). He does assert however that complaints have come to him from supervisors because of the reduction of pay on transfer to day work (Detroit Rec. 1658).

A premium or bonus for night work is universally considered an equivalent for the inconvenience a worker is put to as compared to the one who labors in daylight. Since it nowhere appears that a supervisor who declines day work is subject to disciplinary action no grievance, resolved or unresolved, may be predicated on the loss of the night premium suffered by a supervisor when he is transferred to a day shift. In other cases the foremen asked that a premium be paid for night work.

8. **Complaint that promotions are arbitrarily made.** Foreman Elliott said: on his recommendation an hourly

rated employee (Emery Mason) was made a supervisor (Detroit Rec. 1468). Elliott was then on days, and had charge of both shifts and Mason was put on second shift. While Elliott was at Washington on business of the Foreman's Association, Mason was promoted to Assistant Superintendent, but according to Elliott in name only, for his duties remained substantially unchanged. Although Mason had been recommended by Elliott for promotion as the general foreman on the second shift, he was only a second choice as Elliott had recommended another man. When the person first nominated by Witness Elliott failed of appointment, he suggested Mr. Mason, who was accepted, and who according to Elliott was a good man (Detroit Rec. 1562). The complaint appears to be that Mr. Mason was appointed Assistant Superintendent on nights during the period when Mr. Elliott was on an extended leave.

The incident is the only one adduced as an unfair promotion. The Company tendered no evidence in regard to it, being content in its brief to treat Mr. Mason's promotion as something Mr. Elliott took as a personal affront. By reference to scattered fragments of the testimony Management suggests that Mr. Elliott had been weighed and found undeserving of the promotion (Company Brief 33), whereas nothing in the record indicates he was considered for the job.

Testimony given by Mr. Elliott (Detroit Rec. 1558-1562), develops the procedure of promotion from the rank and file. He says a general foreman proposes several workers whom he deems deserving of promotion. Then he and the superintendent and perhaps others discuss the merits of the nominees. The effort seems to be to get the man best fitted for the job. That there may be difference of opinion is to be expected. But some extended discussion is held and this is true even when a general foreman or a superintendent is to be selected (Detroit Rec. 1561).

Company Exhibit 4 discloses that from 1941 and through June, 1944, the rolls of the supervisors at DeSoto-Wyoming were increased by 128 new members and supplemented by 62 replacements. All but four of the 190 supervisors so

elevated or transferred came from the ranks or from other plants of the Corporation. The significant figure is that only four came from outside. Granted that in the case of Mr. Mason the Company may have erred, (and its representatives freely concede that in the turmoil attendant upon a production drive it has made mistakes), the proofs do not show that Chrysler has as a practice made wrongful promotions into or within its supervisory forces, and the Panel on the evidence must find that the foremen have not established a case that there are unresolved grievances on that score.

9. **Complaint that foremen are arbitrarily demoted or discharged.** In September, 1943, Foreman Lusn had made a disparaging remark concerning a plant protection officer. He was interrogated once or twice, concerning the episode and then discharged, and is now elsewhere employed. To the Panel the discipline administered seems unduly severe, but it cannot be said to be without cause. The testimony is that this is the first foreman discharge in the DeSoto-Wyoming plant in two years (Detroit Rec. 1967; the Company in its brief says since 1940). Taking either date the discharge of only one foreman out of some 225,[1] and that for cause, does not establish such an arbitrary practice on the part of the Company as would require special corrective measures.

In regard to Foreman Bond whose return to the status of a worker is alleged to have precipitated the work stoppage in January, 1944, the end result does not seem to be wrong. Bond seems to have accepted the demotion without displeasure. He had been tried in two foreman's jobs for about a year, and the Company says he did not make good. He was told to report as a job-setter and did not object to do so. After the strike he resigned.

There can hardly be a pending grievance in either Mr. Lusn's or Mr. Bond's case, except that there is lacking any machinery to review Company action in these situations. The incidents were not presented by the Associa-

1 This figure would be much greater if effect were given to the number leaving the service during the period.

tion as unresolved grievances, but to demonstrate the need of a grievance procedure which would afford the foreman and the Association a right to be heard concerning a change in a foreman's status; that is, in the demotions and discharges of supervisors.

9. **The demand of the supervisors for more adequate grievance procedure.** The Association at these hearings has brought forward, not for solution, but by way of illustration, events and episodes, the end results whereof may well be subject to honest debate, and fair differences in judgment among reasonable persons as to the justness of the conclusion reached. The purpose has been to indicate the need for formal grievance procedure. The attitude of the Association was developed by questions addressed to Mr. Elliott, the President of the Chrysler chapter. After discussing a lack of uniformity as to rates of pay the transcript is:

> Q. Of course, Mr. Elliott, if they had an association there really operating with the grievance machinery, these things could readily have been done.
>
> A. Yes.
>
> Q. And be avoided?
>
> A. That is right.
>
> Q. But without an association the Company itself was more or less helpless to avoid these things?
>
> A. That is right.
>
> Q. Because they do not have the necessary information?
>
> A. That is right (Detroit Rec. 51).

There is and there has been no grievance procedure at the DeSoto-Wyoming Plant as the term is commonly understood. Each foreman may discuss, in channels, his problems with his superiors or with the personnel department. The Company insists there is no need for other processes. The Panel's views on the general need for grievance procedures are given in Section XXX.

Board's Exhibit No. 19

XVI. **Federal Shipbuilding and Drydock Company.**

1. **Background.** The company is engaged in the construction of various types of vessels for the United States Navy and Marine Commission. The shipyards of the company are located at Kearny and Port Newark, New Jersey. The employees involved are leadingmen of whom there were on May 15, 1944, 1318 in the Kearny Yard and 902 in the Port Newark Yard (Brief of Leadingmen's Organizing Committee, 4, 5, 6).

The production and maintenance employees of the company are represented for the purposes of collective bargaining by Local 16 of the Industrial Union of Marine and Shipbuilding Workers of America. A great many of the leadingmen are members in good standing of Local 16 (Statement of Leadingmen's Organizing Committee, 5). In December, 1943, the leadingmen formed the Leadingmen's Organizing Committee which has recruited into membership nearly all of the leadingmen of the two units. The Organizing Committee operates as a subordinate organization within Local 16 (Statement of Leadingmen's Organizing Committee, 5).

The leadingmen originally sought to deal with the company through Local 16 as their representative. On February 6, 1943, Local 16 filed a petition with the National Labor Relations Board asking that it be recognized as the exclusive bargaining agent for the company's leadingmen. After the decision of the National Labor Relations Board in the Maryland Drydock case the petition of Local 16 was dismissed. After the failure of Local 16 to obtain recognition as the bargaining agent for the Leadingmen, the Leadingmen's Organizing Committee was formed.

On April 4, 1944, Samuel Rothbard, counsel for Local 16, addressed a letter to the company requesting recognition of the Leadingmen's Organizing Committee as the sole bargaining agent on behalf of the leadingmen. Failing to receive a satisfactory reply, the union counsel called a conciliator of the U. S. Department of Labor into the matter. The conciliator was advised by the company that

it would not recognize the Leadingmen's Organizing Committee. On May 2, 1944, a committee of three leadingmen attempted to present a grievance on behalf of the leadingmen. They were told that the company would not recognize them except as employees of the company and that it would discuss only such matters as related to them personally.

On May 19, 1944, approximately 23 of the leadingmen on the second shift in Department 89 at the Port Newark Yard struck, apparently over the demotion of a leadingman for infraction of company rules. On May 20, 22, and 23, a number of leadingmen in this department were out on strike each day. The strike apparently did not receive the sanction of the Leadingmen's Organizing Committee. By May 24, work had been resumed by substantially all leading men. The dispute was certified to the National War Labor Board about May 25, 1944 and the Board accepted jurisdiction about June 7, 1944.

On June 26, 1944, the counsel for the Leadingmen's Organizing Committee submitted to the company a proposed form of contract which would establish conditions concerning wages, hours, tenure, vacations, sick leave, and a grievance procedure and which would provide for recognition of the Industrial Union of Marine and Shipbuilding Workers of America as the exclusive representative of the Leadingmen for purposes of collective bargaining.

In view of the fact that the Board's resolution of May 18, 1944, creating the Foremen's Panel, excludes from consideration issues involving bargaining rights, the Leadingmen's Organizing Committee does not ask that the company be directed to negotiate a contract with the Leadingmen's Organizing Committee or to sign the contract proposed on behalf of the Leadingmen's Organizing Committee on June 26, 1944. Rather the Leadingmen's Organizing Committee asks that the War Labor Board direct the establishment, without bargaining, of the conditions of work embodied in the proposed contract (Statement on behalf of the Leadingmen's Organizing Committee, p. 5, and New York Rec. August 7, 36).

2. **The General nature of grievances and demands of the leadingmen.** Some conditions asked by the leadingmen are already in effect (Statement of Facts by Federal Shipbuilding and Drydock Company, Company Exhibit 1). These are:

forty-hour work week
designation of regularly scheduled hours for three shifts
time and a half after eight hours'
time and a half for all work performed outside the regular shift
proposal that when the number of supervisors is increased the last one laid off from a supervisor's job shall be the first one restored
proposal that when a vacancy occurs in the leadingmen's bracket and no production man, who was formerly a leadingman, is available, the employee in that trade who has the greatest seniority shall be promoted.

Although the above conditions are in effect, the Leadingmen's Organizing Committee asks that they be made a part of working conditions by order of the National War Labor Board (New York Rec. August 7, 38). At the present time the company may alter these conditions at will. Were they established by order of the Board, the company would not be free to change them. The Panel recommends the Board reject this proposal. Were the proposal carried out to its logical conclusion all employees in war industries who do not possess bargaining rights would have their working conditions made the subject of an order of the Board, regardless of whether or not these working conditions were in dispute. The working conditions then would be alterable only as the Board might permit. No public purpose would be served by requiring such universal freezing of conditions and universal recourse to the Board.

The disputed demands between the leadingmen's committee and the Federal Shipbuilding and Drydock Company relate to:

level of wages
overtime
shift differentials
sick leave
vacations
ratio of leaders to men
grievance procedure.

3. **Demand for higher minimum hourly rates for leadingmen.** Leadingmen ask that the company immediately establish a minimum rate of $1.65 per hour on a salary basis of 40 hours per week from Monday to Friday inclusive for its leadingmen. The company states (Exhibit 1, 9) that the standard rates for leadingmen in skilled trades are $1.335 per hour and $1.40 per hour with some higher rates. During a probationary period a few leadingmen are paid $1.255 per hour. A small number of leadingmen supervising unskilled trades are paid less than the above rates. The record does not show that the rates received by leadingmen in the Federal Shipbuilding and Drydock Company are below the rates paid by other shipbuilding companies in the region. The Panel makes no recommendation for change.

4. **The demand that time and a half be paid for Saturday work as such and double time be paid for work performed on Sunday as such.** Time and a half is now paid leadingmen for all work done on Saturday if Saturday constitutes the sixth day. Double time is now paid for work performed on Sunday, if Sunday constitutes the seventh consecutive day worked. The present practice of the company is the prevailing practice in the shipbuilding industry. The Panel does not recommend a change.

5. **Shift differentials.** The leadingmen ask for a 10 per cent differential for work performed on the second or third shift. At present a 7 per cent differential is paid for work performed on the second and third shift. The Panel has been informed that the policy of the New York Regional Labor Board on night shifts is 5 cents or 5 per cent for the

second shift and 10 cents or 10 per cent for the third shift. The existing practice of the company appears to be in line with the practice of the Regional Labor Board. The Panel recommends no change.

6. **Sick leave.** The leadingmen ask that the employees be allowed a total of eight weeks (40 hours per week) sick leave with pay during each calendar year. In the event that the company doubts that an employee is ill, the parties shall agree upon an impartial doctor to make an examination and the doctor's report shall be conclusive. At the present time there is no sick leave plan for leadingmen. The Panel's views on the subject of sick leave are set forth in Section XXVI of this report. The Panel does not recommend that a sick leave plan be established for leadingmen in the Federal Shipbuilding and Drydock Company.

7. **Vacations.** The leadingmen propose that every leadingman shall receive two full consecutive weeks' vacation with pay each year. Leadingmen now receive one week's vacation with pay if they are continuously in the service of the company one year or more prior to July 1st of any year, and two weeks' vacation with pay if they have been continuously in the service of the company five years or more. The leadingmen proposed that vacation pay shall be computed by multiplying the average hourly earnings during the two pay periods immediately preceding his vacation by the average number of hours he worked during the two pay periods, except that the number of hours used in making the computation shall not be less than forty per week or more than forty-eight per week. The Panel finds no reason to order the change requested.

8. **Ratio of supervisors to workers in each mechanical bracket.** The leadingmen ask that the company retain a force of supervisors in a ratio of one supervisor for no less than five and no more than ten men in each mechanical bracket. The Panel believes that it would be a mistake for the War Labor Board to determine the ratio of super-

visors to rank and file workers. The ratio is bound to vary with conditions including the ability of different supervisors. The management of each plant has far better knowledge of working conditions and of the abilities of different supervisors than any outside agency can possibly obtain. Since the efficiency of mechanical workers depends in part upon their having adequate supervision, management has a strong incentive to employ a sufficient number of supervisors. At the same time management should not be required to employ an excessive number of supervisors. This is true at all times, but it is especially true at the present time when skilled and experienced supervisors are scarce. A few men, because of their ability and energy, are able to supervise successfully a substantially larger number of rank and file workers than are other supervisors. It is desirable that the exceptional supervisor be left free to supervise as many men as he can efficiently handle. A rule restricting the number of rank and file workers for a supervisor would limit the opportunity of exceptional men to demonstrate their ability. One must bear in mind that among the supervisors of today are men who ten or twenty years from now will be plant managers or even the leads of large corporations. These men should be given every possible chance to show and to exercise their talents.

9. **Grievance procedure.** The leadingmen propose that a committee be established through which any grievance, dispute, or controversy between the company and the leadingmen may be taken up by either the company or the leadingmen. The leadingmen ask that grievances which cannot be adjusted by the proposed grievance committee shall be referred to an impartial umpire. At present the company's position is that it is willing to consider the grievance of any supervisor when he himself presents it. He may present it either to his immediate superior or he may carry it higher up. The company, however, will not discuss grievances with the representatives of aggrieved supervisors.

The Panel believes that the present arrangements for

handling the grievances of leadingmen in the Federal Shipbuilding and Drydock Company are inadequate. It recommends that the Board direct the company to establish grievance machinery which is consistent with the recommendations of the Panel in Section XXX of this report. The Panel does not believe that grievance procedure should terminate in arbitration by a neutral. Its views on this point are set forth in Section XXXI of this report.

XVII. Gar Wood Industries

1. **Background.** Gar Wood Industries employs 3369 rank and file employes in the four plants involved in these proceedings. It has 131 foremen and general foremen, 1 general superintendent, 6 superintendents and 3 assistant superintendents (Detroit Rec. 3611, 3612, Exhibit 1). The Company has a diversified business, building road machinery, steel bodies, hoists, refueling tanks and other heavy equipment. It had some war contracts but has completed these (Detroit Rec. 3627). There will be no great reconversion problem when peace comes (Detroit Rec. 3627).

The foremen of Gar Wood Industries were chartered by the Foreman's Association of America on November 17, 1942. The company was advised that the foremen were organizing (Detroit Rec. 3661). On August 30, 1943, at the time the demands were served on other companies, the Foreman's Association of America sent the management a letter of complaint specifying nine grievances practically the same as those filed against the other companies (Company Ex. 5). The request for a meeting was refused (Company Ex. 6). On May 4, 1944 another letter of complaint was sent to the management. No reply was received from the Company and on May 9 the foremen went on strike (Detroit Rec. 560-561). War Labor Board took jurisdiction and the men returned to work on May 17th.

2. **General level of compensation of supervisors.** The testimony is not entirely clear as to what the base rates of pay for foremen are. There are two methods of pay-

ment in use at Gar Wood's. Some foremen are on salary and, in addition to the salary, they receive a bonus, while other foremen are on an hourly rate. General foremen receive $364 per month and foremen, about $325. There is a variance in the amounts earned by different individuals. The principal witness for the Union was Mr. MacKintosh, the President of Chapter 7, who stated that the amount of the salaries was satisfactory (Detroit Rec. 544), but the hourly-rated supervisors who, said the witness, receive only $1.36 per hour, wanted more money. This is a grievance with these men (Detroit Rec. 545) and is discussed below under the heading of "Differentials in rates between supervisors and workers".

The witness said he did not have any idea why there were two methods of compensating supervisors (Detroit Rec. 542), but the Company's witness, Mr. Wood, explained that foremen are always promoted from the ranks during an upsurge in business and for a time are kept on hourly rates (Detroit Rec. 3623). To place them on a salary basis during such a period of increased production and then return them to an hourly-rated production was found to be unsatisfactory. The present expansion of production was found to be abnormal and thus the same procedure was followed. Supervisors may choose whatever method of compensation they desire, and having made a choice are permitted to change. The trend is toward fixed salaries (Detroit Rec. 3624, 3625). Mr. Wood said that his Company has competition in smaller communities where wage rates are lower (Detroit Rec. 3626), and that Gar Wood foremen have steady employment, and are "certainly paid the going wage" (Detroit Rec. 3628). The average earned per hour of foremen was $1.45 and hourly rated employes $1.34 (Exhibit 4). Every time a raise was granted the rank and file adjustments were made with foremen (Detroit Rec. 3665). The hourly rate of the supervisors paid under that method ranges from $1.06 to $1.65 per hour (Detroit Rec. 3655).

No comparative data on the compensation of supervisors was submitted by the Foreman's Association. Even as to

the hourly rates, the chief complaint seems to relate to the fact that some of the men made more than the supervisors. The Panel finds that there is no evidence that the supervisors are underpaid.

3. **Lack of uniformity in rates paid supervisors doing similar work or with similar responsibilities.** There are statements in the record that there is a difference in rates, but the witness (Mr. Beckett, who read from sheets furnished by the foremen) said few foremen know their exact classification; hence the Panel finds close comparison is impossible (Detroit Rec. 565-568).

4. **Differential in rates between supervisors and workers.** Mr. MacKintosh, the President of Chapter 7, says some supervisors receive only $1.36 per hour, whereas some men under them earn $1.52 per hour (Detroit Rec. 545). One such foreman was identified by Mr. Beckett as Foster Eid. He was getting $1.36 per hour, while his men receive $1.52. In 1941 Mr. Eid was receiving $1.31 and his men $1.36. There is abundant evidence that in some cases workers receive more than their foremen, but this is attributed to the fact that while the men are on incentive rates (Detroit Rec. 575), foremen are not (Detroit Rec. 3649). The Company is cognizant of this situation, and Mr. Wood believes it belittles a foreman (Detroit Rec. 3648).

Nothing can be done about the differential at this time (Detroit Rec. 3648), but the Company has a firm of engineers engaged on revising the wage structure (Detroit Rec. 3649).

The Panel finds that, due to the fact that some workers are on incentive rates at Gar Wood Industries, they may make more than some of the hourly-rated supervisors. The Panel finds that the fact that some workers at Gar Wood earn more than the supervisors is an unresolved grievance. The Panel also finds that the revision of the wage and salary scale of supervisors for which studies are now being made is likely to eliminate this grievance. Consequently the Panel makes no recommendation to the Board on this point. If the revision of the wage and

salary scale fails to eliminate this grievance, cases may be taken up under the Grievance procedure recommended by the Panel in Section XXX of this report.

5. **Overtime and Sunday work.** Mr. MacKintosh said that salaried supervisors receive no compensation for overtime work, and that they work "plenty" (Detroit Rec. 542). One foreman, Maxwell Adams, is said to have worked 26 consecutive Sundays in 1942 (Detroit Rec. 542). The witness said he himself worked Saturdays, Sundays, holidays and plenty of nights (Detroit Rec. 542). Probably, said the witness, the bonus which is given at Christmas time is to compensate for overtime (Detroit Rec. 549). An hourly-rated supervisor may sometime make as much on Saturdays and Sundays as a salaried foreman does in a whole week (Detroit Rec. 571). Mr. Wood, vice-president of the company, said in answer that hourly-rated foremen came from the ranks and will have to go back on their jobs when peace comes, and the Company gives them every advantage while they are foremen (Detroit Rec. 3622). Witness Beckett, who was an hourly-rated supervisor, complained that if he was a minute late he was docked, but unless he worked a full half hour overtime he received no extra pay (Detroit Rec. 584).

When the plant went on to a 48-hour week rates of foremen were increased 20 to 30 per cent (Detroit Rec. 3665). This approximate time and a half up to forty-eight or fifty hours (Detroit Rec. 3666). Mr. Wood for the Company said there was a considerable amount of overtime doing work on a rush order just after Pearl Harbor, but that Foreman Adams was never requested to work 26 consecutive Sundays (Detroit Rec. 3629). His card does not show it, although he may have come into the plant on Sundays to see if everything was all right in his department (Detroit Rec. 3630). Sunday work by a supervisor is voluntary (Detroit Rec. 3631, 3686).

In the spring of 1944 there was a rush job, and 13 foremen put in considerable time over 48 hours per week. The Company asked permission to pay the foremen premium pay similar to that given to hourly-rated employees. The

period of overtime was about forty-five days. The Salary Stabilization Unit of the Treasury Department allowed about one-half of the requested increase for overtime (Detroit Rec. 3653, Exhibits 8 and 9).

Witness Swanson said he worked seven days a week for the past two years (Detroit Rec. 611). Mr. Wood testified that when a foreman worked Sunday, he could take a day off if he wanted to (Detroit Rec. 3686). No evidence was presented showing that foremen in fact availed themselves of the opportunity. The Panel believes that the arrangements for paying salaried supervisors for Sunday work at the Gar Wood plant are inadequate up until spring of 1944. The salaried supervisors are not paid for Sunday work to the extent that the decision of the Salaried Stabilization Unit of the Treasury permits. Consequently, since a ruling on this point has been made by the agency the government empowered to act, the Panel finds no unresolved grievance.

6. **Sick leave.** There is no problem here. The foremen admit the Company, while it does not have any fixed plan, is "very good in that respect" (Detroit Rec. 548). The fact is that sick leave period seems to be unlimited, as one man was paid for a full year (Detroit Rec. 3626, 3628). The Company cannot understand why foremen would wish to put a limit on the period of leave (Detroit Rec. 3628).

7. **Cash bonus.** A cash bonus is ordinarily paid at Christmas time in amounts from $100 to $300 (Detroit Rec. 3633-3634). The bonus is in the way of a performance award, and to compensate the foremen, in a way, for overtime. Witness MacKintosh says he would prefer overtime pay in lieu of, or as well as the bonus (Detroit Rec. 550). Witness Beckett does not get a bonus because he is not on salary, but he contrasts the average amount of the bonus with about $2400 overtime pay he drew in 1943.

8. **Bonus for night work.** Witness MacKintosh says the salaried foremen on night shift receive no bonus, although the rank and file worker gets 5 cents extra (Detroit Rec.

546). The Company says the day foreman has greater responsibility and lays out the work, so the differential is really there (Detroit Rec. 3632, Brief 15).

9. **Seniority and promotion, demotions, and transfers.** These subjects are considered together as all involve length of service. The Association claims there is no seniority recognition at Gar Wood's. In a letter to Mr. Wood dated May 4th, 1944, the foremen demanded a meeting with management, and it said: "They (the foremen) have no seniority rights they can depend upon" (Detroit Rec. 561). Mr. Stewart said there is no seniority among the foremen (Detroit Rec. 591) and specifically the foremen point to some individual cases.

The Association has considered seniority important and, when no reply was received to its letter of May 4th, 1944, demanding it, "Drastic action" was taken; that is, the members went on strike (Detroit Rec. 562) on the seniority and perhaps other demands.

In reply Mr. Wood, the president of the company, testified that practically all of its foremen have come up from the rank and file, and, if they are demoted and go back as workers, they get cumulative security (Detroit Rec. 3665). Mr. Wood testified that seniority is a "definite factor" in demotions and promotions of foremen, but said that ability as well as seniority is considered. All other things being equal, seniority will govern (Detroit Rec. 3668).

John Currie was, says the Association, next in line for a vacancy in a higher level in supervision, but the Company promoted a vice president of C. I. O. to the place (Detroit Rec. 556). The Company, it was said, took a person who was not a foreman and made a general foreman out of him, disregarding a foreman with two or three years experience (Detroit Rec. 557). Mr. Wood claims that Mr. Mercer, who had been appointed, was the better qualified person for the job (Detroit Rec. 3643).

Harry Stewart, a foreman of two and one-half years,

was on the afternoon shift. He was demoted to the status of worker, because he was told a shift was to be discontinued. Mr. Stewart believed that he should have replaced Foreman Sanders, who had less seniority and less experience in that job than he had. As foreman of pipe-fitters Mr. Stewart was receiving $1.41 an hour, and now as a worker he receives $1.51 (Detroit Rec. 593-594). The Company claimed that, because of a reduction in operations, it was necessary to demote Mr. Stewart, and that Mr. Sanders was not replaced by Mr. Stewart because Mr. Sanders was able to perform work which Mr. Stewart was not (Detroit Rec. 3655, 3656).

John Bell, four years a foreman, said he was told that either he or the night foreman would have to go back to the ranks. He said that later a foreman with a higher classification was brought in from another plant, and because he (Mr. Bell) did not wish to take the night shift, he went back to the ranks (Detroit Rec. 599). The new foreman took not only Mr. Bell's job, but that of another foreman as well (Detroit Rec. 600). Mr. Ritz, the new man, had greater seniority (Detroit Rec. 601). The witness makes 19 or 20 cents an hour more as a worker than he did as foreman (Detroit Rec. 602).

The foremen appear to consider seniority should apply as to shifts. Mr. Beckett said: "You could be a foreman ten years and if the Company wanted to, they could put you on nights" (Detroit Rec. 592). Mr. Swanson who had five years experience declined to go on nights (Detroit Rec. 614).

The cases of promotion, demotion and transfer cited by the Association show only a difference of opinion between some of the foremen and representatives of Management over who should be promoted or demoted but they show no abuse of impartial discretion. The record presented by the Foreman's Association contains no evidence that Management was lax in attempting to find in each case the man best qualified for the job. The grievance of John Bell appears to be particularly far-fetched, for not only does he earn more at his new job than at the old one, but

the man who took his place has greater seniority than Bell has.

10. **Grievance procedure.** The Association feels strongly on the matter of grievance procedure. Mr. MacIntosh says definitely that nobody handles grievances for the foremen (Detroit Rec. 552); that when the witness discussed foremen's grievances with Mr. Wood he was told that if the foremen were not satisfied with the conditions, they could go elsewhere. In 1943 there was an interview between the witness and Management wherein the witness felt that he had been "spanked." However, Mr. Wood did say he would see any individual foreman or group of foremen if they had a grievance (Detroit Rec. 564). In April, 1943, a group of foremen met Mr. Wood by appointment to talk over the John Currie Case (Detroit Rec. 565), but when the group met Mr. Wood said: "What is this—a bunch of Communists?" (Detroit Rec. 558).

There were no conferences with the officials of the Company during the strike (Detroit Rec. 562). Foremen are permitted to talk to Mr. Wood personally (Detroit Rec. 574), but when Mr. Palmer attempted to bargain on his own behalf he got discouraged and quit (Detroit Rec. 579). The position of the Company is that Mr. Allison, the superintendent, is ready to listen to any complaints (Detroit Rec. 3657), and that Mr. Wood is also available (Detroit Rec. 3667). The Association sent a letter August 30th, 1943, to Mr. Bassett, the president of the Company, which was replied to on September 8th. These letters constitute Exhibits 5 and 6. The management in its letter (Ex. 6) refused to meet with representatives of the chapter as the bargaining agent for foremen and the letter concluded: "We shall, as always, however, be glad to discuss with any individual foreman, any grievances which he may feel he has against the Company."

The Panel believes that the arrangements for handling the grievances of foremen at the Gar Wood Company are inadequate. It recommends that the Board direct the establishment of grievance machinery corresponding to that outlined in Section XXX of this Report.

Board's Exhibit No. 19

XVIII. Hudson Motor Company.

1. **Background.** Hudson Motor Car Company is engaged in war work. It operates three separate plants in the Detroit area, which are known as the Jefferson, the Charlevoix and the Gratiot plants. As of the time of the hearings, the Company employed 595 supervisors and somewhat over 10,000 hourly rated employees (Company Ex. 1).

The foremen of Hudson Motor Car Company received a charter from the Foreman's Association of America on November 17, 1942. There is no evidence of negotiations with the Company. On May 1, 1944 the Foreman's Association of America made demands upon the Company that it reinstate a foreman, pay a night shift bonus, and grant seniority rights (Detroit Rec. 468). The Company failing to act, the foremen went on strike that day and remained out until May 17, when the other strikes of early May were terminated. The case was certified to the Board June 9, 1944.

2. **Inequalities in the pay of supervisors.** It does not appear that the rates of pay, as such, constitute a grievance. The chief witness for the Association was Mr. Joseph George Hornett, who is a foreman or a supervisor, and who is president of the Hudson chapter of the Foreman's Association. He was asked thus:

> Q. "Are the rates of pay, as such, a grievance, or is it more or less inequities in the matter of paying the various foremen of the same classification for different work?
>
> A. "I would like to put it this way . . . the complaint has been that John Brown gets more than Jack Jones who is doing the same class of work and John Brown can only go to his superintendent and beef about it . . ." (Detroit Rec. 443).

There is no further reference in the record to basic rates of pay, or any complaint concerning the salaries paid the various levels of supervision. In Company's Exhibit 17, the average compensation of supervisors was said to be:

Board's Exhibit No. 19

Assistant Foreman	$330.00 per month
Foreman	350.52 per month
Asst. General Foreman	388.50 per month
General Foreman	390.00 per month

The complaints as to inequalities between individuals are many. The witness read a memorandum (Detroit Rec. 440) of "notes" made after the hearings had commenced. These notes referred to perhaps a dozen supervisors and the following are the principal instances cited:

Mr. L. Ponder, a foreman, was paid $305 per month, the same as his "assistant," Mr. Stacy. The Company replied that the two gentlemen had equal rights as foremen in the Stores Department, each responsible to Mr. Crowell (Detroit Rec. 3532). Witness said that Mr. G. Howland, a foreman, received $312 per month and has as an assistant, Mr. W. Faulk, who receives $305 per month. The Company asserts that Mr. Faulk is not Mr. Howland's assistant. Both foremen work for Mr. Crowell in the Stores Division, and, says the Company, a difference of seven dollars in the salaries is justified by the difference in ability of the foremen (Detroit Rec. 3534).

It was said that Mr. R. R. Wilcox, also in the Stores Division, received $300 per month, and that he was replaced by Mr. S. Tyson who receives for the same work $350. The Company asserts that Mr. Tyson was receiving $335 at the same time that Mr. Wilcox was earning $300 per month, and that Mr. Tyson has been recently granted $350 (Detroit Rec. 3535) because it is said Mr. Tyson is "on his way up."

Complaint was made that B. Stacy and Mr. Faulk were recently made assistant foremen at a rate of $305 per month, whereas Mr. E. Combs and Mr. R. R. Wilcox of the same classification and longer periods of service received only $300 per month.

Witness also referred to a complaint that the differences in rates between Assistant General Foreman Crowell ($350) and Foreman Ponder ($305) and Foreman Holland ($312) is not commensurate with the differential between As-

sistant General Foreman Crowell ($350) and General Foreman Williams at $390 (Detroit Rec. 441).

Witness said as he read his notes that "this was a thing that happens to me day in and day out, that causes me to wonder if we do have any set figures." The differential in lots of cases is so great that it is hard to "tie them up" (Detroit Rec. 441). The Company contends that there is a minimum and a maximum schedule approved by the Salary Stabilization Unit with a relatively wide range (Detroit Rec. 3536).

In answer generally to the complaints of the foremen concerning lack of uniformity, the Company took the position that the Union was bringing forth unverified complaints, and that when these alleged complaints were investigated by the employers, they disappeared (Company Brief, 9). In the individual cases, the Company justified the difference in pay because of the differences either in the responsibility imposed upon the foremen or the ability displayed by them.

The evidence in the record is not sufficient to enable the Panel to express a judgment on the merits of the particular alleged inequalities submitted by the Association.

3. **Delay in making adjustments in the compensation of individual foremen.** Foreman Hornett asserted that the only way adjustments could be brought about was to "yell loud enough" (Detroit Rec. 441). Two old employees of the Company Gus Gualkin and Al Kaufman were getting $325.00 for six days work a week and took it upon themselves to get a raise. They spoke to the acting superintendent who recommended a twenty-five dollar raise (Detroit Rec. 443). The negotiations were pending for about a year and finally the raise was approved as of April first, 1944, and the first pay checks received July 1, 1944 (Detroit Rec. 444). The Company contended these foremen were not as skilled as others, and their work did not require as much experience as that of other foremen in the machine shop. The Works Manager, Mr. Taylor, did not believe

the raise was warranted and did not approve it until April 1 (Detroit Rec. 3537).

Mr. Hornett testified that the production manager wanted him to set up some research procedure in tooling for post war work. Witness did not want the job unless he could get a raise. He had been promised an increase of twenty-five dollars, but it has never gone through. Witness found another job outside the plant, but said he lost it because of activity in the strike (Detroit Rec. 500).

Henry Peter Rochan testified that he was employed at Gratiot plant as a power house foreman. He considered himself a foreman, but found out that he was classified as an assistant general foreman. He does not receive the salary of an assistant general foreman, as one Sweeppy, an assistant general foreman, receives forty dollars per month more. He requested an increase and it was recommended in the amount of thirty dollars, which however, was later turned down (Detroit Rec. 517). The men went on strike and this foreman was ordered to go back to work by the Association in order not to damage Company property by shutting down the power plant. In a very short time he received the promised raise. This witness also complained he could not understand how his check was figured (Detroit Rec. 519), and he still believes that in comparison with Mr. Sweeppy he is underpaid (Detroit Rec. 521).

The Company explained that Mr. Sweeppy's job required a first-class engineer's license whereas Mr. Rochan required only a second-class license. As to the difficulty in computing the check, the Company said an error had been made, in that fifty dollars was actually paid Mr. Rochan instead of thirty, and the overpayment was rectified the following pay day (Detroit Rec. 3568).

4. **Differentials in pay between foremen and the men under them.** No complaint seems to have been made by the Foreman's Association that the rank and file workers receive more than the men who supervise them, but nevertheless the Company offered its Exhibit 17, which shows an average differential of 35 per cent as between assistant

foremen and rank and file and 42 per cent as between foremen and rank and file. The average differential in earnings between general foremen and rank and file is 57 per cent. On the average the assistant foremen received $1.59 an hour, foreman $1.68 an hour, and the average rank and file worker $1.18 per hour.

5. **Overtime, Saturday and Sunday work.** The Company works six days a week and employees are compensated for overtime services as follows:

Since May 29, 1944 all grades of supervisors have been paid compensation for overtime, but the base pay and overtime must not exceed $650 per month. The standard work week is 48 hours and compensation up to 60 hours in any one week will be paid pro rata if the additional time has been approved by the superintendent. The practice of paying 75 cents supper money was discontinued. Time and one-half is paid for Sunday work provided some work shall have been performed by the supervisor on each of the preceding six days.

Witness said that foremen have worked more than 60 hours a week prior to the Sunday worked, but were not compensated beyond the 60 hour maximum. Witness said that overtime had been put in by foremen as well as Sunday work since 1941. In March, 1944, the men apparently refused to work on Sunday and stayed out for two Sundays (Detroit Rec. 450). The Company states its position in Exhibit 18, which discloses that when the normal work week was increased from five to six days, salaried supervision was given a 20 per cent increase to compensate it for the additional day's work. In March, 1943, application was made to the Treasury Department to pay foremen overtime on a straight time basis for 60 hours per week. The original application was never approved, but early in 1944 approval was secured for the present program.

As to the extent of the overtime work, the Company and the Association differ. The testimony on behalf of the Company was that for the last six months of 1943 less than

one thousand production employees worked on any Sunday (Detroit Rec. 3541), and on most of the Sundays, the numbers ranged from 400 to 500. At the rate of one supervisor to 30 employees, therefore there would be only 15, or perhaps 20, foremen working on any Sunday (Detroit Rec. 3541).

On May 21, 1944, the supervisors held a meeting and decided to discontinue working holidays unless they received time and one-half. Witness Hornett claimed that if a supervisor did not work on a holiday, the Company would not pay him for the overtime he had accumulated during the week (Detroit Rec. 478).

As to the holiday work, the witness testified that if a foreman did not work on a holiday he would receive 48 hours pay, the same as any other week, but recently the Treasury Department approved a plan to pay straight time and overtime for hours in excess of 40 hours a week. That is a supervisor who worked the first four days in the week, did not work on Friday because it was a holiday and worked Saturday, would receive straight overtime compensation.

Whatever may have been the experience in the past, the Panel finds that at the present time, foremen are compensated for overtime and Sunday work on a plan approved by the Stabilization Unit and there is now no unresolved grievance on overtime.

6. **Bonus for night work.** One of the demands in the communication of April 30, 1944 was for:

> "(2) A sure promise to be made of paying a bonus to night foremen and supervisors."

There is no bonus for night work by supervisors although the rank and file receive a five-cent an hour increase while on the second and third shifts. (Detroit Rec. 3511.) The position of the Company is that the foreman on the day shift has the greater responsibility, in that he does the planning and lays out the work for the later shifts; hence extra responsibility of the day shift foremen offsets the

inconvenience involved in night work, and no differential, therefore, should be paid. (Detroit Rec. 3511, Brief 15.)

7. **Sick Leave.** There is a sick leave plan in effect. Witness Hornett said that recently "we learned" that only two weeks away from work would be allowed for sickness or because of disability arising out of accident occurring outside the plant. The witness said that it had been customary to give a much more extended leave. (Detroit Rec. 484.)

Witness referred to one Birkhan who had been employed by Hudson for about sixteen years, most of the time as supervisor. He suffered a broken leg in an automobile accident and was paid two and one half weeks. Then he was notified that he was off the payroll. (Detroit Rec. 485.) The information was that since in the past injured persons had received longer leave, Mr. Birkhan was discriminated against. (Detroit Rec. 485.) The Company has a different story. It says that Mr. Birkhan was injured on January 31 and his compensation was continued for the full month of February, and that thereafter Mr. Swegles, after talking with Mr. Birkhan, granted an additional half month's salary. (Detroit Rec. 3563.) The Company admits that other supervisors have been paid for a longer time because they held higher supervisory positions or had been longer in service. (Detroit Rec. 3564 and Company Ex. 19.)

8. **Demotions, Transfers, and Discharges.** The supervisors at Hudson went on strike on May 1, 1944—four days after the foremen at Briggs struck, but before the foremen struck at Packard, Murray, Gar Wood, and Aeronautical Products. It was claimed by Mr. Hornett that the Hudson foremen went out as a matter of principle, not in sympathy with any other striking chapter.

A general foreman, Henry Harms at the Gratiot plant, had been with the company some sixteen years, and was on a Navy mine anchor project. The government then introduced a new type of mine which had quite a lot of electrical devices. Witness Hornett asserts that the

tooling for the new job was not adequate and that the rank and file, mostly women, were inexperienced. In April Management decided to put an engineer in charge of the job as general foreman. One Saturday evening, Mr. Harms was called into the office and told he would not be on the job any more. (Detroit Rec. 460.) Mr. Harms was put on clerical work for two or three days. (Detroit Rec. 461.) As soon as the Association heard of the removal it sent a written protest to Management. (Detroit Rec. 463.)

The Company on its part read into the record a written summary of the Harms case. 'Mr. Harms was transferred to a general foreman's position on Navy projects in December 1943, and after two months' time the Navy asserted they were not satisfied with the quality of the product. In March, 1944, an engineer was assigned to help Mr. Harms, and on a Saturday, Mr. Harms was told by the superintendent that Mr. Williams would take over the supervision and that he (Mr. Harms) would be made assistant superintendent to work on special assignments. His salary was not changed. (Detroit Rec. 3558.) The Company says Mr. Harms was not demoted, neither did he lose any time and on July 16, 1944, received an increase in salary of twenty-five dollars per month. He had been given a hearing by the Company which claimed there were logical reasons for the transfer and that Mr. Harms himself did not express any dissatisfaction with the final disposition of the matter. (Detroit Rec. 3559-3561.)

Lemar Sisson had been with the Company some twenty years in various capacities and was a general foreman on a Wright Aeronautical contract. He was told that he was to be taken off the job and placed on trouble shooting because he was not making the grade. (Detroit Rec. 451.) The trouble shooting job would have paid Mr. Sisson twenty-five dollars a month less than he was getting in his previous department. (Detroit Rec. 3548, 3549.) The Company claimed that Mr. Sisson's department showed lack of cooperation, that he, Mr. Sisson, did not follow orders, and that there was a large amount of scrap

in his department. (Detroit Rec. 3548.) Mr. Thall, the Personnel Officer, reviewed the case and advised Mr. Sisson to take the trouble shooting job. He said that he would do his utmost to get Sisson his previous rate of pay. (Detroit Rec. 3549.) The Hudson Chapter of the F. A. A. informed Mr. Sisson that they did not feel that it was proper for him to take the trouble shooting job. (Detroit Rec. 457.) Consequently, he was paid off by the Company. Mr. Sisson stayed away from work about four weeks. A committee of the Foreman's Association wished Sisson to be returned to his job so that he could be "negotiated off" the job in the proper manner, a manner that would become his position as general foreman. (Detroit Rec. 457.) Witness for the foremen testified that Mr. Sisson was eventually put back on his job and remained there for about four hours. (Detroit Rec. 458.) Then he was put on postwar work for which he receives his previous rate of pay. (Detroit Rec. 3551.)

Mr. Sisson testified in his own behalf and said he had individually tried to discuss his case with the Management and attributed being put back on the job to the efforts of the Foreman's Association. (Detroit Rec. 529.)

9. **Seniority.** One of the demands incorporated in a communication drafted at a meeting of supervisors on April 30, 1944, was for:

> "(3) Seniority rights for all foremen and supervisors to be recognized by Hudson Motor Car Company.
>
> "Same to be company wide." (Detroit Rec. 468.)

Witness Hornett claims there were grievances over the lack of observance of seniority, and he cited the case of a man who had been with the Company for a year and who had been promoted to be a general foreman without the older men being tendered the job. (Detroit Rec. 493-494.) The Company made no answer to this complaint because it was unable to check the incident. (Detroit Rec. 3565.)

Mr. Hornett referred to a leader who had been promoted to a special assignment on salary, and expressed his opin-

ion that other foremen in the division should have been given consideration. Witness was unable to give the name of this man. (Detroit Rec. 494.) The Company said the man's name was Jack Milan and that he was given a job as a tool trouble man. (Detroit Rec. 3564.) The job pays a little more than some of the lower levels of foremen but ultimately does not pay as much as a foreman received. The Company said it did not desire to transfer a man out of a place where he was experienced and put him in a place where he had no experience at all. (Detroit Rec. 3565.)

It was said that the superintendent on one occasion demoted four foremen of the DNX Department and set them back to operators' or jobsetters' jobs. (Detroit Rec. 496.) The Company answered that there was a curtailment in the DNX contract, and these men had to be placed somewhere; and that there has been no further complaint. (Detroit Rec. 3566.)

A foreman accumulates seniority in relation to rank and file employees if he had hourly rate experience at Hudson's, and had belonged to a local of the C. I. O., otherwise not. (Detroit Rec. 3490.)

The Company considers the principle of seniority to be unworkable as a determining factor in making promotions or demotions in the higher levels of supervision; it contends that unless promotion is on ability and merit there is a destruction of individual incentive. (Detroit Rec. 3519; Company Brief, 15.)

10. **Grievance Procedure.** There has been a form of grievance procedure at Hudson. The foremen have a committee of three, one of whom has been elected from each plant. (Detroit Rec. 442.) This Committee went to the employment manager, Mr. Thall, and after a few meetings was passed on to Mr. Jack Webster. (Detroit Rec. 454.)

Although the Committee has met with Management it understands it is not recognized and cannot bargain. (Detroit Rec. 477-479.) All agreements or arrangements are

strictly verbal. (Detroit Rec. 483.) The members of the Committee when it meets with Management, apparently infrequently of recent date, are not docked for time spent in the discussion. (Detroit Rec. 480.) The highest achievement of the Committee was the settlement of the Sisson episode. (Detroit Rec. 456.) In addition the foremen claim some credit in that since their organization, they have received premium pay for overtime, and an effort has been made to get them back into the grievance picture. (Detroit Rec. 493.)

Witness read a letter written on May 30th last by Vice President Swegles, to the effect that Management would discuss with an individual supervisor his own problems. (Detroit Rec. 489; see Company Ex. 20.) The feeling of the supervisors, as expressed by the witness, is set out in his spontaneous answers, here and there in the testimony. He testified that individual bargaining is ineffective, as men are afraid of repercussions, and as an illustration he said he could have brought some witnesses before the Panel, but they were afraid to come. (Detroit Rec. 500); that the Executive Board of the Hudson chapter of the Foreman's Association directed the witness, who was president of the chapter, not to talk to Management alone. (Detroit Rec. 486-A); that the Company, notwithstanding the Committee, still makes arbitrary decisions. (Detroit Rec. 496.)

It is the lack of a grievance procedure which is "the only reason for the existence of the Chapter" (Detroit Rec. 504) and collective bargaining is their ultimate aim. (Detroit Rec. 505.) Most of the supervisors say to the Association "We don't care what you call it. You get us something in black and white." (Detroit Rec. 505.)

In this case the Company made an opening statement wherein it expressed itself definitely as opposed to the grievance procedure, and it stated that it would refuse to hold any further meetings with any group or committee which assumed to bargain collectively for its foremen. (Brief 7.) Witness Waldron for the Company stated that although the Company was not willing to bargain with a

committee, it is willing to listen to a committee which has grievances to present. (Detroit Rec. 3543.) The Panel is forced to conclude that despite the Company's discussion of some grievances with their foremen, the procedures have been demonstrably inadequate to maintain harmonious relations with the supervisors. The Company should be directed by the Board to establish grievance machinery corresponding to that outlined in Section XXX of this report.

XIX. The Maryland Drydock Company.

1. **Background.** The Maryland Drydock Company is engaged exclusively in ship repair and ship conversion. It has one plant at Baltimore, Maryland. The Company has expanded during the war to eight to ten times its normal work force. It now employs approximately 9,000 men of whom about 850 are supervisors. The employees involved in this dispute are three classes of supervisors—temporary supervisors, working leaders, and leaders.

Since February, 1949, the Company has been in continuous contractual relation with Local 31 of the Industrial Union of Marine and Shipbuilding Workers of America as representatives of the production employees. In the first year of the relationship of the Company with Local 31, the union insisted upon excluding all supervisory employees from bargaining. Later the attitude of Local 31 changed, and it attempted to bargain for the supervisory employees. These efforts led to the well-known decision of the National Labor Relations Board in the Maryland Drydock case on May 11, 1943 in which the Board ruled that supervisory employees do not constitute an appropriate unit for collective bargaining. Local 31 then sought recognition as representative of the supervisors in a case before the Shipbuilding Commission (case #25-397D, WLB and #111-2685D). The claim of Local 31 to represent the supervisors was again denied.

After the supervisors failed to obtain representation through Local 31, they sought to negotiate as a separate

group. The majority of the supervisors involved in this dispute are members of Local 31 (Washington Rec. 388). The supervisors meet regularly once a month, but they have established a negotiating committee of seven. All members of this committee are members of Local 31. In addition, the supervisors have established an advisory committee of 21. About half of this committee are not members of Local 31 (Washington Rec. 68). On November 20, 1943 the supervisors filed demands with the company for wage increases, reclassification of temporary supervisors, vacation and sick leave with pay, recognition, grievance procedure, and arbitration. Although the company was willing to meet a committee of supervisors, a dispute arose because the supervisors wished to have a representative of Local 31 present at the negotiation. This led to a strike November 26 to December 1, 1943. This dispute was certified to the Board on January 4, 1944.

2. **Wages.** The supervisors have demanded that temporary supervisors be paid 15 cents an hour more than the highest rate paid in the craft within which they perform supervisory duties. The temporary supervisors are the lowest rank in management. The rate of compensation for temporary supervisors has been included in the agreement between the employer and Local 31. Consequently the Shipbuilding Commission has passed on this rate and has set a differential of 10 cents between the temporary supervisors and the highest rate paid in the craft which each man supervises (Washington Rec. 221). The Panel sees no reason for changing this differential.

Data submitted by the company at the request of the Panel Chairman show that 399 out of a total of 533 working leaders on July 15, 1944 received either $1.35 or $1.38 an hour; 114 working leaders received from $1.07 to $1.27 per hour; and 22 working leaders received $1.43 or $1.48 per hour. Fifty-nine out of 119 leaders received $1.43 per hour. Out of 1,355 first-class mechanics, 644 received $1.13 per hour; 658, $1.20; 46, $1.27; and 7, $1.31. There were 18 specialists receiving $1.38 per hour.

Board's Exhibit No. 19

The data submitted by the company show the following relationship between the compensation of working leaders and the highest first-class mechanic's rate paid in the department.

No difference	22
7 cents	25
8 "	22
11 "	34
12 "	2
15 "	254
16 "	8
17 "	4
18 "	83
21 "	9
22 "	3
25 "	2
30 "	1

In three departments, labor, salvage, and stage building, no comparison is made because no first-class mechanics were employed. In the outside machinist department, the comparisons between the compensation of working leaders and first-class mechanics was based upon the first-class rate of $1.27, although one first-class mechanic received $1.31. Fourteen first-class mechanics received $1.27 and 76 received $1.20 or $1.13. In the toolroom the first-class mechanic's rate was taken as $1.20, although one man received $1.27. Nineteen men, however, received $1.20 or $1.13.

The above data show that 359 out of 479 working leaders receive from 15 cents to 18 cents an hour more than the highest rate paid first-class mechanics; 105 receive no differential or a smaller differential than 15 cents and that 15 receive a larger differential than 18 cents. The relationship between the compensation of leaders and the highest first-class mechanics rate paid in the department is as follows:

Board's Exhibit No. 19

Difference	Number
5 cents	1
7 "	1
15 "	8
16 "	8
18 "	18
21 "	14
23 "	51
26 "	1
37 "	5
40 "	1
46 "	2

Out of 110 leaders 83 received from 18 cents to 23 cents an hour above the highest rate paid first-class mechanics.

The problem of making fair comparisons between departments is complicated by the fact that in some departments, such as the machine shop or the shipfitting, a small fraction of the first-class mechanics receive a higher rate than the bulk of the first-class mechanics. In a machine shop, for example, 6 out of 74 first-class mechanics receive $1.31 an hour, and the remainder receive $1.27 an hour or less. In the shipfitting department 11 out of 96 first-class mechanics receive $1.27 and 85 receive $1.20 or $1.13. It is not unreasonable to have the differential based upon the rate which the bulk of the workers receive rather than the rate which a few of the highest paid first-class mechanics receive. To do otherwise might introduce inequalities between working leaders of similar skill and responsibilities. The wages of the workers supervised, of course, are not necessarily the only factors which should determine the compensation of supervisors.

The substantial number of working leaders whose differential is less than the typical difference of 15 to 18 cents indicates that a review of this differential is needed. The evidence of possible inequalities in the case of leaders is less convincing than in the case of working leaders. Nevertheless, a review of the differential would be desirable. Over 20 departments are involved and the condi-

tions in these departments are likely to be different in important respects. The record before the Panel is not sufficiently informative to permit the Panel to make well-grounded recommendation to the Board. The company should be able on its own initiative to work out needed correction in the differentials of working leaders and leaders above first-class mechanics—a correction which will be approvable under the wage stabilization program. The grievance procedure recommended by the Panel in Section XXX of this report will enable management to obtain the views of the working leaders and leaders. If the company is unable to work out a correction of the differentials, the proper agency to consider the problem would be the Shipbuilding Commission.

3. **Vacations.** The Committee of Supervisors asks that employees who have been in the service of the company for one year or more shall receive a vacation of two weeks in each calendar year with 96 hours' pay. At the present time hourly rated supervisors receive vacations of one week after one year's service and two weeks after five years' service. The argument of the supervisors is that the working leaders and leaders should be given the same treatment as other people in the company who are part of management. Those leaders who happen to be on a salaried basis are already receiving two weeks' vacation after one year's service. There are 11 salaried leaders out of 119 (Washington Rec. 334). Counsel for the union concedes that the vacation rules of the company for hourly-paid supervisors are typical of the industry (Washington Rec. 334). The Panel recommends no change in the vacation plan.

4. **Sick Leave.** The Committee of supervisors asks that no deduction from the pay of the supervisory employee be made for brief absence due to illness. In the case of an illness resulting in a continuous absence of more than three days, the supervisory employee will be granted 48 hours pay for each of the first two weeks of such absence, and the difference between 48 hours' pay and the amount of group insurance benefits received by him or which he

would receive if he were covered by the company's group insurance policy for each of the two succeeding weeks of such absence.

The Panel's recommendations on sick pay are contained in Section XXVI of its report.

5. **Seniority.** The Committee of supervisors asks that demotions among supervisors be governed by length of service, including both length of service as a rank and file employee and length of service as a supervisor. It asks that where the skill and ability of supervisory employees are fairly equal, promotions will be governed by length of service in the supervisory classification below the one to which promotion is to be made (Washington Rec. 363-365). The Panel believes that the weight which should be attached to length of service in making promotions and demotions of supervisors should be determined in each case by management. The Panel's views are expressed in Sections XXVII and XXVIII of this report.

6. **Demotion for Grievance procedure.** The supervisors ask that grievance machinery be established with representatives to receive grievances in each department and an umpire to whom deadlocked cases may be appealed. The Committee of Supervisors says that since December, 1943, it has had no difficulty in seeing responsible officials of the company in regard to grievances (Washington Rec. p. 8). Meetings have been held almost every month. The management says that it will receive the representatives of the supervisory group "at any time that they wish to come in, but that it will not 'recognize' them as representatives of the supervisory group" (Washington Rec. 101-102).

The Panel believes that grievance machinery should be established which meets the specifications outlined in Section XXX of this report. For the reasons given in Section XXXI of the report the Panel does not believe that the grievance procedure should terminate in arbitration by a neutral.

7. **Demand for a limited probationary period for temporary supervisors.** The supervisors' committee asks that a limit of 30 days be applied to service of men as temporary supervisors. At the end of this period the man would either be promoted to working leader or demoted to the ranks. In time of peace the term temporary supervisor meant what its title implies—man temporarily elevated to supervision (Washington Rec. 256). The sudden expansion required by the war led to a great increase in the number of people called temporary supervisors. In May, 1943, there were 171 working leaders and 502 temporary supervisors (Washington Rec. 264). Most of the so-called temporary supervisors had ceased, in fact, to be temporary supervisors in the pre-war sense of the term. They had held the job for many months. The Company has endeavored to correct this situation. In July, 1944, there were 544 working leaders and only 156 temporary supervisors—a reversal of the ratios which were obtained 14 months earlier (Washington Rec. 264).

The Company says that during the war the occupation of temporary supervisors should serve three purposes: (1) it should be probationary for the occupation of working leaders; (2) it should serve the same purpose as it did before the war, when a temporary supervisor is appointed to replace another supervisor who may be on vacation; (3) the occupation may employ the capacity of people who may be able to perform the duties incident to the first step in supervision, but who do not have the capacity to go beyond the first step (Washington Rec. 256, 257).

Illustrative of the third point, the Company says that there are certain kinds of work which need a little more than watching over to assure that the people are doing their jobs properly. T' is is the kind of work which might be done, according to the Company, by a limited temporary supervisor. The working leaders, however, should be able to instruct and to do a difficult phase of the job that the workman could not do. The working leaders should also be competent to order materials and to see that they got on the job. The Company believes that there

are opportunities for limited temporary supervisors particularly in the laboring department, in the stage building department, and in certain stages of the iron working department where the work is relatively simple (Washington Rec. 259-260). The Company asserts that if it were required to consider work as temporary supervisors as probationary for the job of working leaders or to promote or demote temporary supervisors after a limited period of time, it would be compelled to demote many temporary supervisors to the ranks (Washington Rec. 257-258).

The Panel is not impressed with the distinction which the Company endeavors to draw between temporary supervisors who are capable of becoming working leaders and those who are not capable of becoming working leaders. It believes that the job of temporary supervisors should either be temporary, in the pre-war sense of the term, or should be probationary for the position of the working leader. Within a 30-day period the management should be able to determine whether a temporary supervisor will make a satisfactory working leader. The Panel recommends, therefore, that men shall not be kept as temporary supervisors for more than 30 working days.

XX. The Murray Corporation of America.

1. **Background.** The Murray Corporation of America has four plants which in May, 1944, employed nearly 14,000 employees. All of the plants are engaged exclusively in the production of war goods. Only the Main and Ecorse plants are involved in these proceedings. Some of the supervisors in the Main division, however, were involved in the strike which occurred in May, 1944. In June, 1944, the Ecorse and Main plants employed about 10955 employees of whom 599 were department, shift, or section supervisors. The Ecorse plant is engaged in manufacturing frames for large military trucks (Company Statement, 1). The Main plant is engaged in aircraft assembly (Detroit Rec. 1046).

The supervisors of the Murray Corporation involved in these proceedings are represented by Chapter 34 of the

Foreman's Association of America. This chapter was chartered on May 2, 1943. Organization among the supervisors at the Ecorse plant occurred as early as 1938 when some of them belonged for a time to a foreman's local in the C. I. O., known as Local 918. This organization was discontinued at the time of the Chrysler strike in 1939 (Detroit Rec., 924). In February, 1942, the department supervisors, shift supervisors, and section supervisors at the Ecorse plant again formed an association. It was known as the Murray-Ecorse Supervisors' Association (Detroit Rec. 932). This association proposed that management sign the following agreement:

> "The management of the Murray Corporation of America does hereby agree that the Supervisors' Association of the Murray Corporation of America, Ecorse Plant No 7, have the right to decide jointly with management all details which pertain to the rates of pay, working conditions, and all matters which have to do with the welfare of the members of the Supervisors' Association of the Murray Corporation Plant No. 7" (Detroit Rec. 926).

The Company refused to sign the proposed agreement and suggested instead that meetings be held regularly once each month and that the committee of supervisors give management ten days prior to the meeting a list of grievances which would be brought up (Detroit Rec. 927). A number of meetings were held and a number of grievances disposed of. For example, the foremen obtained a telephone line to an outside assembly shanty, definite parking spaces for foremen, additional lockers for foremen, and an agreement that foremen with greater seniority would receive choice of shifts (Detroit Rec. 927, 928, 929). The supervisors' committee undertook to make suggestions for promotions and protested the selection which the Company made to fill the position of tool shop supervisor (Detroit Rec. 935, 936, 944, 945). After a few months the meetings between the management at Ecorse plant and the foremen were discontinued.

Board's Exhibit No. 19

After several unsuccessful requests to obtain recognition from the Company, the Murray-Ecorse Employees' Association, on November 19, 1942, filed with the National Labor Relations Board a petition for investigation and certification of representatives pursuant to the provisions of the National Labor Relations Act. After hearings before a trial examiner on January 7, 1943, the National Labor Relations Board, on February 24, 1943, established three units appropriate for the purposes of collective bargaining: one including department supervisors, one including shift supervisors, and one including section supervisors. Elections were held on March 26, 1943. Upon motion by the Company for reconsideration of the Board's decision of February 24, 1943, the National Labor Relations Board ordered that the scheduled elections proceed, but that the ballots be impounded and not counted pending further decision of the Board. On July 6, 1943, the National Labor Relations Board, in a supplemental decision and order, reversed its previous decision and "for reasons set forth in the Maryland Drydock Company case" found that the department, shift, and section supervisors did not constitute units appropriate for the purposes of collective bargaining and dismissed the petition of the Association (Detroit Rec. 970-972).

A dispute arose in May and June, 1943, between the supervisors in the Ecorse plant and the Murray Corporation over the discharge of a foreman and the refusal of the Company to negotiate the matter. Mr. Robert H. Keys, president of the Foreman's Association of America, appealed to the United States Conciliation Service for help in adjusting the matter. Failure to adjust led to a short strike among the supervisors of the Ecorse plant on July 10, 1943 (F. A. A. Exhibit 6 and Detroit Rec. 973). The Foreman's Association asserts that the walk-out was unauthorized. Immediatley after the walk-out on July 12, 1943, the Foreman's Association filed a dispute notice pursuant to the War Labor Disputes Act. Upon certification of the dispute to the War Labor Board, Mr. Keys withdrew the 30-day dispute notice filed by the Foreman's Association of America.

Board's Exhibit No. 19

On November 4, 1943, a hearing was held by the automotive staff of the Detroit Regional Labor Board on the question of the Board's jurisdiction in the dispute. On January 6, 1944, the National War Labor Board held a hearing on the question of its jurisdiction in the Murray case and five other cases involving supervisory employees.

On April 29, 1944, the officers of the Murray chapter of the Foreman's Association of America addressed a letter to Mr. Glen Stock, supervisory counsel of the Murray Corporation, in which they listed the following three grievances on which they asked a reply by Wednesday morning, May 3, 1944:

"1. Reinstatement of the following supervisors pending negotiations:

Edward Ford
Joseph Smela
Henry Hansen
William Husben
Roy Kellmorgan.

2. Recognize a proper system of seniority in demoting or promoting supervisory employees.

3. Removal of Mr. Kuhn for his dictatorial methods in handling those men under him" (Company Exhibit 34)

Two days after the deadline, namely May 5, many of the supervisors in the main plant of the Murray Corporation joined the strike of foremen which had begun in the Briggs plant on April 27 and had spread to the Hudson plant on May 1, and the Packard plant on May 3. None of the foremen in the Ecorse plant of the Murray Corporation, the plant involved in these proceedings, joined the strike of May 5. Mr. Keys says that he wired them from Washington to remain at work (Detroit Rec. 1277).

2. **The general level of compensation of supervisors.** The union concedes it has no complaints as to salary rates, as such. The principal witness, Mr. Balcom who was in

the lowest level of supervision received $5014 during 1943, and he admitted that the majority of the supervisors have no wage grievances (Detroit Rec. 721). In its brief (p. 2) the Association admitted inadequacy of pay was not an important question at the hearing. It said:

> "(a) Inadequacy in the pay of foremen was not an important question at the hearing, and only a small amount of testimony was taken on the subject, for the reason that neither this Panel nor the Board is primarily concerned with having definite and adequate machinery for promptly handling cases of inadequacy of wages or excessive hours, when the same arise. But to be without any means or machinery to consider foremen's demands for adjustment of salaries, wages, or hours, is like operating a powder factory without fire prevention."

3. **Lack of uniformity in the compensation of supervisors doing the same or similar work.** There is no substantial grievance concerning lack of uniformity in rates of pay. Witness Balcom said: "There are variations, but there are very few variations" (Detroit Rec. 621). Again he said in relation to this subject (Detroit Rec. 725):

> "Q. What is the grievance, now? Let us just understand this.
>
> A. The grievance is very minor.
>
> Q. Very minor?
>
> A. That's right."

The cases of three supervisors were mentioned. These men had gone to the general supervisor to inquire why they were not receiving full rate for the job classification, and they claim they get no results (Detroit Rec. 657, 658).

On cross examination, Witness Balcom freely admitted variations in wages was not a grievance (Detroit Rec. 724, 728).

4. **Insufficient differential in rates between the supervisor and the workers under him.** There is no grievance on this score. Witness Balcom said (Detroit Rec. 722):

Board's Exhibit No. 19

"Q. Now during the course of this strike to which referred, I think Mr. Keys was quoted in the paper as saying one of the grievances that supervisors made less in many of the operations than the hourly production workers they supervise. Do you recall that statement in the newspapers?

A. No, I do not.

Q. The statement was made during the course of these proceedings, was it not?

A. That's more than possible, but it may not have been the Murray Corporation.

Q. Well, it does not apply at the Murray Corporation, does it?

A. No, sir, it does not."

Vice President Gould of the company said (Detroit Rec. 1125) that he knew of no worker who made more money than his supervisor. According to the figures submitted by the Company, section supervisors are now getting 47 per cent more than the hourly workers, shift supervisors 60 per cent more and department supervisors 72 per cent more. (See Chart No. 2.)

5. **Overtime, Saturday, and Sunday work.** At the Murray Corporation supervisors are paid a monthly salary based on a five day week of eight hours each (Detroit Rec. 621). In 1940 and 1941 an overtime payment plan was worked out (Detroit Rec. 624). Overtime is the same for all classes of supervisors. Straight time is paid for overtime beyond the eight-hour standard day and straight time is paid for Saturdays regardless of whether it is the sixth consecutive day of work. On Sunday double time is paid if it is the seventh consecutive work day in the week (Detroit Rec. 622). It was said by Witness Balcom, a supervisor at Murray and a trustee of the Foreman's Association, that the overtime plan was worked out after the time the Foreman's Association was started in the Ecorse plant (Detroit Rec. 623).

Mr. Gould, vice president in charge of operations, testifying on behalf of the Company, said that the hourly worker receives greater benefits through the operation of

the 40-hour work week, in that he receives time and a half for overtime whereas the salaried employee receives only straight time except for holidays or the seventh day when the salaried employees receive double time.

It does not appear to the Panel that there were any serious complaints on the part of employees of the Murray Corporation against the overtime plan. The witnesses were questioned about overtime and gave answer substantially as stated. Their answers did not appear to be in the nature of complaints.

6. **Bonus for night work.** The supervisors receive no bonus or premium for night work (Detroit Rec. 628). This does not appear to be a major grievance. The Panel's recommendation on night shift premiums appears in Section XXIV.

7. **Sick leave.** Ten days sick leave (not consecutive) are allowed supervisors in a year. Five days of sick leave may be taken consecutively. There appears to be no real grievance and what the supervisors wish does not appear to be clear even to the supervisors themselves. One witness said that the supervisors wish to be paid for sick leave whether they are sick or not (Detroit Rec. 631). This witness probably does not speak for the supervisors as a whole.

8. **Salary adjustment procedure.** The Murray Corporation continually reviews its salary schedules. Company's Exhibit 6 is the standard procedure for hiring supervisors (Detroit Rec. 112). Exhibit 7 is entitled "Salary rate classification and adjustment policy." It is designed to insure proper consideration be given to every one on salary, and the plan provides for periodic review. One hired as section supervisor where the basic salary was $315 would receive not less than 75 per cent of it, and might receive up to 90 per cent thereof. Monthly, the rate is reviewed. In cases of exceptional performance the basic rate may be increased 10 per cent (Detroit Rec. 1115). Exhibit 9 discloses that 72.4 per cent of the supervisors

receive the basic rate, that is 100 per cent of their evaluations, 6 per cent are over it and 21.6 per cent of the supervisors are under the evaluation; but it is said only 2.7 per cent of the 600 supervisors are below 90 per cent of their evaluations.

The average earnings of the supervisors are substantial (see Chart 2) and this fact, and the salary adjustment procedure probably accounts for the lack of complaints by Murray supervisors as to rates of pay.[1]

9. **Demotions, transfers and discharges, and lack of grievance procedure.** Notwithstanding the Association on August 13, 1943, presented the Company with a set of more or less formal demands in letter form (Detroit Rec. 734; Company Exhibit 35) the association has now but a single complaint, and that is the elements of job security, seniority, and grievance procedure compressed into one issue.

Mr. Keys in the presentation of the Foreman's case against Murray Corporation said:

> ". . . the foremen as a group have one major grievance and that is lack of grievance machinery; lack of representation; lack of an opportunity to get redress of their grievances . . ." (Detroit Rec. 682).

Said Witness Balcom:

> "Our prime grievance with the Company is that a man is taken off of supervision and he hasn't got a soul in the world to go to" (Detroit Rec. 659).

Again this witness said:

> "Q. . . . And most supervisors at Murray have no grievance have they?
>
> A. I would say the majority have no wage grievance. They all have a grievance of wanting to hold their jobs (Detroit Rec. 721).

[1] Mr. Walter McNally, a witness for the union, said: " . . . until today I believe Murray foremen are among the highest paid foremen in mass production industry" (Detroit Rec. 932).

Board's Exhibit No. 19

> Q. What other grievance have you besides . . .
> A. Our one primary reason (grievance?) is when a supervisor is demoted, transferred or discharged, he has nobody to go to" (Detroit Rec. 815).

In many other places in the record occur similar statements. What is uppermost in the minds of the individual foreman is not that the job is bad, but rather the fear of losing his job (Detroit Rec. 637).

Witness Balcom ties job retention with length of service and says that the Company claims to recognize seniority, all other factors being equal (Detroit Rec. 637), but failure to do so is "one of our biggest grievances" (Detroit Rec. 638). The witness no doubt had reference to the letter of Mr. Avery, the president of the Company, dated March 30, 1944, wherein it was said:

> "When personnel changes are made, length of service is given serious consideration and other things being equal is the determining factor" (Detroit Rec. 669).

To sustain its point, the Association developed incidents relating to demotions or discharges of several supervisors. It was made clear that the Panel was not expected to try and to resolve these individual grievances. They were brought forward by the Association as types of things that are alleged to happen frequently, and to resolve which remedial machinery is imperative. These cases include the removal of Earl Gossett (Detroit Rec. 655), the removal of Harry Nephew (Detroit Rec. 638, 660, 1201), the removal of R. J. Chrisher (Detroit Rec. 635, 636), the demotion of Miller (Detroit Rec. 674), the removal of Eugene Liestner, which was one of the events that led to the strike of May, 1944 (Detroit Rec. 686, 690), the layoff of five supervisors about April 26, 1944, another event which seems to have been connected with the strike of May 3 (Detroit Rec. 694).

Management, in its Exhibit 36 captioned "Grievances mentioned in Frank Balcom's testimony", gave its reply in these instances. Each transfer, demotion or discharge

was commented on at length and the answers, in each case if they are true, would establish good cause for the company action. No rebuttal of the Company's position was offered. It is obvious that the Foreman's Association places one inference on the facts and the Company another. Since no grievance was before the Panel for decision on the merits, the only purpose of setting out the cases here is to state the contention of the Association, and to point out that the Company claimed justification in each case.

10. **Grievance procedures at Murray Corporation.** As explained in the background of the Murray case, the Company has heretofore met a committee of foremen in the Ecorse plant to discuss grievances. This procedure does not seem to have extended beyond the Ecorse plant. The last meeting that the representatives of the supervisors had with the plant management was in October, 1942 (Detroit Rec. 960). Mr. Schulz, who was in charge of the Ecorse plant as plant manager, was transferred and it is said that Mr. Weitzel who succeeded him said that in the game of supervision it was "every man for himself." Thereafter proceedings were instituted before the National Labor Relations Board for certification as the collective bargaining agent for Ecorse foremen (Detroit Rec. 962).

The Company has set up a supervisory counsellor in the industrial relations division. He has the special responsibility of dealing with the personnel problems of supervisors. A supervisor who has a grievance may take it up with his immediate superior or, if he prefers, he may consult the supervisory counsellor. The supervisory counsellor has no authority to make changes, but he may recommend remedial action. The procedure established is not adequate to assure a prompt and effective adjustment of grievances. The Panel recommends that the Board direct the Company to establish grievance procedure in accordance with the recommendations of Section XXX of this report.

XXI. New York Shipbuilding Corporation

1. **Background.** The New York Shipbuilding Corporation of Camden, New Jersey, is a shipbuilding firm engaged

in constructing vessels for the United States Navy. It employs more than 25,000 persons. The dispute concerns 692 sub-foremen, in approximately thirty departments. It does not concern the higher ranks of supervision, at the level of ship and shop foremen and above.

The employees here involved are members of Local 1 of the Industrial Union of Marine and Shipbuilding Workers of America. They constitute a subordinate organization of Local 1. Although the Company deals with Local 1 as the bargaining representative of the rank and file workers, it does not recognize either the union or its subordinate organization as the bargaining agent of the sub-foremen. The sub-foremen appear here as a group of employees and not as a union.

Two attempts to obtain recognition and bargaining rights for the sub-foremen have been made by the union. A petition before the National Labor Relations Board was dismissed July 12, 1943 in accordance with the Maryland Drydock decision. The Shipbuilding Commission subsequently disclaimed jurisdiction to determine the issue. On July 29, 1943 the Corporation agreed to recognize a committee of three sub-foremen as a grievance committee. It has since faithfully complied with its promise to recognize the committee and to discuss disputes, complaints, and grievances of the sub-foremen (Statement on Behalf of the Sub-Foremen, 8). As a result of disputes over classifications and compensation work stoppages occurred in September, 1943. The issues were submitted November 8, 1943 to the Shipbuilding Commission of the War Labor Board. On May 5, 1944, the Sub foremen's Committee requested the Company to grant arbitration as a final step in the grievance procedure, information on rates of pay, seniority in demotions, and an adjustment in vacation pay. This issue was certified to the Board June 1, 1944, and referred to this Panel. The information on rates of pay has been supplied by the Company.

The attitude and policies of the Company in this case are notably different from those in all of the other companies before the Panel. Although the sub-foremen are

considered arms of management and have membership in the union of the rank and file workers, the Company does not consider that such membership has interfered with the performance of supervisory duties (New York Shipbuilding Rec. 102). The Company would prefer to have production workers put on an inactive status in the union when they become sub-foremen, and has proposed this to the union, but it has not pressed the suggestion. It has conferred with its sub-foremen and it has worked out a grievance procedure in which the sub-foremen participate. While such grievance machinery has furnished a basis for settling many minor grievances, it did not prevent work stoppages in 1943.

2. **Wages.** Sub-foremen are paid a salary based on a 40-hour week, and are paid overtime for all hours worked over eight in one day and over 40 in one week. The weekly salaries of the first-class sub-foremen are $75.84; second-class $71.34; third-class $63.84; cleaner sub-foreman $57.12. These employees are allowed sick leave and excused time off for personal business. Since October 1943 they have worked 52 hours weekly with pay for 58 hours. They have had a year-end bonus of 8 per cent of their base pay for the year, and a 7 per cent premium is paid for the night shifts. The compensation of these sub-foremen is said to be the equal of that of a Colonel or Brigadier General (New York Shipbuilding Rec. 80). No issue is before the Panel over the level of compensation. The issues which arose in 1943 concerning classification and compensation have been heard before the Shipbuilding Commission (Case No. 111-4873-D) and a decision has recently been handed down.

3. **Vacation pay.** The vacation pay of sub-foremen is two weeks at the basic weekly salary for a 40-hour week. For two years these employees have been working 48 or 52 hours per week with overtime. The production workers receive vacations with pay computed on their total annual earnings at 2 per cent for one week, or 4 per cent for two weeks. Sub-foremen, considering their rank temporary, desire vacation compensation computed as for production

workers, on annual earnings at 4 per cent. The proposal was rejected by the Company. So also was a compromise proposal that the allowance be computed on a 48-hour week with overtime for that number of hours. The Company explains that the present vacation compensation is the same for all salaried employees; that the arrangement is not unfair in relation to anybody else; and that to change it would require similar adjustments for ship and shop foremen and others up the line (New York Shipbuilding Rec. 81). Since salaried employees have other benefits not available to hourly rated employees, the Panel does not find the present vacation compensation inequitable.

4. **Seniority.** The policy of this Company in promoting men from the ranks to sub-foremen positions and in demoting sub-foremen back to the ranks when cut-backs occur appears to be well established. The union asks for a rigid seniority rule but limits its request to demotions.

The present policy of the Company was announced by Mr. H. E. Parker, industrial relations manager of the Corporation on August 30, 1943.

"Management's Policy Concerning Seniority Standing of Sub-Foremen

"1. Seniority standing of sub-foremen shall be determined by their skill and by their length of service.

"2. Whenever skill and ability are fairly equal, length of service shall be the determining factor.

"3. Length of service shall be determined by years and months of service employed as a sub-foreman, in the craft, in the department where he is employed.

"4. If a reduction of force is made necessary, due to lack of work, sub-foremen shall refer it back to the skilled classification from whence they came, and in that classification shall be given credit in length of service for time spent as sub-foremen in that craft."

This was interpreted by the sub-foremen to mean that the last man in a craft and in a department to become a sub-foreman would be the first reduced in rank if there

were a contraction in staff. The interpretation became important on April 3, 1944, when it was necessary for the Corporation to eliminate one of the shifts in the Sheet Metal Department (New York Shipbuilding Rec. 39) and to demote a number of sub-foremen. The Corporation did not follow the expected procedure and instead demoted sub-foremen who had a great deal more seniority than those that remained (New York Shipbuilding Rec. 40).

Two reasons were advanced for this when the question was raised as a grievance: first, that seniority was followed not on a department-wide basis but rather by crafts within the department; and secondly, that, according to the statement of August 30, skill and ability were to be the determining factors (New York Shipbuilding Rec. 40, 41).

The sub-foremen argued that this department could not and should not be divided into crafts for the purpose of determining seniority and order of demotion, that the sub-foremen had been shifted from job to job within the department and therefore they were all equally capable of handling any of the sub-foremen's positions within that department (New York Shipbuilding Rec. 41).

The sub-foremen proposed straight seniority when reductions are necessary due to lack of work (New York Shipbuilding Rec. 46; Employees Brief, 10). Seniority would be determined within the department except that it might be determined by craft in a department where more than one craft is employed.

Colonel Gardner in discussing the demand stated that the policy followed was that applied to the rank and file employees. The Company cannot tie its hands in promotions and demotions. The same argument is made here as in the Maryland Drydock case that merit and ability are factors that must govern in demotions as well as in promotions (New York Shipbuilding Rec. 45-48). The Company reserves the right to keep or promote the men it considers most suitable (New York Shipbuilding Rec. 69, 70). The Panel's recommendations regarding seniority appear in Sections XXVII and XXVIII of this Report.

5. **Arbitration in the grievance procedure.** The grievance most seriously pressed by the sub-foremen is that calling for arbitration as a final step in the handling of grievances.

This is the only one of the companies before the Panel which has a formal grievance procedure in which the supervisory employees participate through a committee. On July 29, 1943, Mr. H. E. Parker for the Company agreed to establish such a procedure. The agreement provides:

> "The Corporation will recognize a committee of not to exceed three Sub-foremen as a Grievance Committee providing such Committee is elected by the Sub-foremen for such purpose.
>
> Any dispute, complaint or grievance of any Sub-foremen shall be referred by the Sub-foremen concerned to the Department Head, and any Sub-foreman may be accompanied by one or two members

(Printer's Note: A page of this exhibit is missing at this point, being page 127 of the original exhibit.)

XXII. Packard Motor Car Company

1. **Background.** This company was organized in 1903. Prior to the present war its principal business was manufacturing automobiles. In 1939 it started tooling and preparing for defense work, first producing marine engines (Detroit Rec. 3076). Since 1940, it has been making Rolls Royce engines, and it was in full production at the time of Pearl Harbor (Detroit Rec. 3077). It is now engaged wholly in war work. In times of peace, the Company ordinarily employed around 8200 persons (Detroit Rec. 3099), but as of June 1st 1944, there were 39,020 hourly rated employes (Detroit Rec. 3088) and a little less than 900 foremen (Exhibit 24).

The foremen of the Packard Motor Car Company received a charter from the Foreman's Association of America on October 13, 1942. In November they requested conferences with the management for purposes of collec-

tive bargaining. Several meetings were held, the first being on December 4, 1943 (Detroit Rec. 113-4). A consent election on February 24, 1944, gave the Foreman's Association of America 486 votes to 2 against (Detroit Rec. 113). Through a misunderstanding the agreement for a consent election contained a provision by which the Company agreed that the foremen constituted an appropriate unit for purposes of collective bargaining. Subsequently the Company, contesting, refused to recognize or bargain with the Association. (Company Statement 3-4), although a three-man committee of foremen continued unofficially to deal with management in the settlement of grievances, and still does (Detroit Rec. 115, 116). On May 21, 1943 the Association requested a resumption of negotiations and submitted a proposed contract. Then on August 30, 1943, it sent its typical letter of complaint setting forth 13 grievances and demands (Company Exhibit 6). A considerable number of these demands were for negotiation with Foreman's Association of America. On November 5, 1943 a further letter of complaint was addressed to the Conciliation Service, requesting certification of the dispute to the Board. This letter set forth grievances concerning: recognition, negotiation, seniority, sick leave, temporary adjustments in compensation, overtime, wages and salaries, classification, bonus for night shifts, assignment of work and vacations. On December 11, 1943, the case was certified to the Board (Company Statement 2). The jurisdiction of the Board was discussed at a hearing in Washington on January 6, 1944. On May 3, 1944, the foremen went on strike without serving any demands upon the Company (Detroit Rec. 3252), and without complying with the procedures required by state or Federal laws. This strike was simultaneous with others in the Detroit area. The men returned to their jobs on May 17, the day before the Board's resolution authorizing this Panel.

2. **General level of compensation of supervisors.** The salaries paid to supervisors do not seem to constitute any substantial grievance. Testimony was given as to the pay

different levels of supervision received, but criticism by the foremen was not directed at the rates as much as matters incidental to the salary schedule. Most of the assistant foremen are paid by the hour, on rates ranging between $1.30 and $1.50. Some of the assistant foremen, however, are on salary receiving from $250 to $260 per month (Detroit Rec. 120). Foremen and general foremen are paid a monthly salary. The Company stated the salary ranges to be the following:

General foremen in production and miscellaneous departments (Detroit Rec. 3134) ..... $260 to $330 per mo.

General foremen in skilled trades. $304.50 to $383.25 per mo.

Foremen in production and miscellaneous departments ..... $220.50 to $315.00 per mo.

Foremen in skilled trades (Detroit Rec. 3135—Exhibit 24) ..... $278.25 to $283.25 per mo.

There was no evidence that the salary paid Packard foremen was out of line with salaries paid foremen of similar classification in the area. The Company said the division of supervision into salary and hourly rated groups was purely historical.

Company Exhibit 24 shows that the average earning per month of foremen for the first quarter of 1944 was $494.54 per month (practically $6,000 per year), and Mr. Turnbull, one of the witnesses of the Association, stated he was making about $600 per month (Detroit Rec. 186).

3. **Complaint that the differential between compensation of foremen and workers under their supervision is inadequate.** The foremen gave testimony that an hourly-rated assistant foreman might receive between $1.30 and $1.50 per hour while there might be a leader or job-setter making $1.40 or $1.45, and that the differential was only 5 or 10 cents. This had been complained about and the employer said he would do what he could about it (Detroit Rec. 129-130). This differential might entirely disappear

if overtime is worked (Detroit Rec. 158). It was said that in the tap inspection department the leader receives $1.50 per hour, which is the basic rate of the foremen; because of overtime, the worker receives more than the supervisor (Detroit Rec. 153-154). The Company did not deny that lack of differentials in isolated cases. It said it was fundamental that the foreman should be paid more than the men he supervised (Detroit Rec. 3251). The Company submitted figures showing that, on the average earnings base, the foremen received for the first quarter of 1944 $496.54, whereas the top rated-hourly employes reporting to the foremen had $392.76 during this same period. Thus the foremen averaged 26 per cent more than the top hourly-rated man. Since all hourly-rated men averaged $310.42, the foremen were paid 60 per cent more than that group (Detroit Rec. 3202, 3203).

The figures were further broken down to show that there were only 14 cases where the earnings of the top hourly-rated men exceeded that of their immediate supervisor. These are explained in detail by the Company (Detroit Rec. 2303). In some cases, the hourly-rated men worked longer; in some instances the hourly-rated employe was a highly skilled man performing work which the foreman himself could not do (Detroit Rec. 3204). In a few cases overtime was the cause (Detroit Rec. 3204). Since only fourteen cases occurred in four months out of a possible 872, the Company does not believe that there is any substantial showing of a lack of proper differential as between the rates of pay of the foremen and of the men reporting to them.

The foreman—Witness Bounin—who complained that a tap-setter earned more than he did, could not, it was said, do the work which the specialist was doing; and inasmuch as three employes reporting to Mr. Bounin had hourly rates at $1.25, $1.27 and $1.29 per hour, whereas Mr. Bounin's hourly rate was $1.50 per hour, the men obviously worked longer hours than he did (Brief 16). The Company asserts that any inequalities when discovered, were and will be corrected. Counsel claims it is to the credit of the

company that although all of the foremen were canvassed, there was so little found that could be complained of (Brief 17).

4. **Complaint that compensation for overtime, Saturday and Sunday work is inadequate.** There was considerable testimony on the subject of overtime and Saturday and Sunday pay; more indeed than appeared warranted in view of the ultimate admissions of the foremen. Hourly-rated foremen received overtime as provided under the Fair Labor Standard Act and Executive order 9240, and there is no overtime problem insofar as these supervisors are concerned.

The foreman on salary receives overtime up to 10 hours each day (Detroit Rec. 121): The hourly-rated foremen receive time and one-half for over 40 hours a week as well as time and a half for Saturday and double time for Sunday (Detroit Rec. 142). If, however, the salaried foreman works on Saturday, he receives time and one-half up to five hours, and the salaried foreman receives for Sunday work time and one-half (Detroit Rec. 122-123).

The foremen say that they are dissatisfied with the present set up and want time and one-half for overtime work and double time for the seventh consecutive day. In other words, they desire to come under Executive Order 9240 (Detroit Rec. 124) without apparently getting off the salaried basis. It is said that what the foremen complain most of was the lack of overtime pay (Detroit Rec. 156). The foremen state that the present payment of overtime went into effect March 1st, 1942 (Detroit Rec. 159). At one time the men refused to work on Sunday (Detroit Rec. 170).

The Company explained the premium pay situation as follows: Prior to Pearl Harbor there was no program of overtime for supervisors, and no formula for overtime compensation had been established, although increases were given on an individual basis to men who seemed to be entitled to them. But in January and February of 1942, overtime became persistent and as of March 1st, 1942, the

present program was set up (Detroit Rec. 3107, Exhibit 13). Salaried foremen were exempt from the Fair Labor Standards Act, but the Company of its own accord set up an overtime payment plan which provided that overtime would be paid in excess of 8 hours in any one day or 40 hours in any one week up to the work schedule in the department. Saturday's pay was time and one-half, but there was no double time for Sunday (Detroit Rec. 3108). The Company said that historically no overtime had been paid to any supervisor before the present war; that overtime pay prior to Pearl Harbor was incidental and that it was inconsequential (Detroit Rec. 3109). The Company, nevertheless, believes in double time for Sundays and has made application to the Stabilization Unit of the Treasury for authority to pay it (Detroit Rec. 3120). The Company, however, asserts that the amount of overtime for foremen is not great. It submits a calculation showing that for the month of April the cards of 372 supervisors show that the average overtime was 54 minutes in the entire month. Consequently the Company contends that the foremen were not working any amount of overtime without pay under the present system (Detroit Rec. 3138-3140).

The Company believes that overtime should be paid to the foreman if he works long hours frequently and that if he works on the seventh consecutive day he should receive double time. The Company further says the only reason why the foreman is not paid overtime under Executive Order 9240 is that legally the Company cannot do so. Application has been made to the Stabilization Unit for permission to pay double time for Sunday work, but at the time of the hearing the Company had not received permission to make the payments authorized under the Executive Order 9240.

The significant concession of Mr. Keys would seem to dispose of the issue of overtime payment. On page 3294 of the record, Mr. Denison said: ". . . the record is clear that we have done our best to get double time and are still at it." Ans. Mr. Keys: "We do not deny that you have tried to get it and done your best to get it."

In this case the grievance of overtime compensation of the foremen is against the stabilization policy of the Government rather than against the Company.

5. **Demand for a bonus for night work.** When a demand was made on the Company in August of 1943, to pay a bonus for night work, no bonus was then being paid. On April 5th, 1944, the Company applied to the Salary Stabilization Unit for permission to pay to its supervisory employes a bonus of 5 **per cent** of their earnings while working on the night shift. The request of the Company was turned down and the payment of a bonus of 5 cents an hour was granted (Detroit Rec. 3290, Exhibit 17). At the time of the hearing the matter was being further pressed by Management, but it was not able to put any part of the order of the Stabilization Unit into operation as it was contesting that part which denied double pay for Sundays.

6. **Inability of foremen to compute how their pay checks are figured.** A minor complaint of the Union was that it was difficult to compute how a pay check was figured, even granted the supervisor knows the amount he should receive each month on a 40-hour week (Detroit Rec. 185). The Company explained the difficulty in comparing the amounts for each six-weeks period because the employe's pay is on a semi-monthly basis, whereas his overtime is computed on a weekly basis. Hence no two pay checks were ever the same and would not be except as a result of "happenstance."

Application has been made to the Salary Stabilization Unit for permission to change from what had been a semi-monthly basis of pay to a weekly basis paid bi-weekly (Detroit Rec. 3121).

This grievance is of minor importance.

7. **Complaints concerning the sick leave allowance.** It was said by the foremen that although there was supposed to be twelve days a year sick pay if a supervisor is absent because of illness he is docked (Detroit Rec. 194). The

result of the policy is that if a man is off on Monday and works on Saturday, he does not get overtime (Detroit Rec. 195). The Company, in the form of an exhibit, showed that every foreman mentioned by the Association had received all the sick leave he was entitled to (Exhibit 28).

The Company has applied to the Treasury Department for permission to increase the sick leave limit to 24 days for men with one or more years of service, but the Treasury Department has refused the permission requested and the matter is still pending (Brief 8).

Anthony L. Taube—became ill and was ordered to take a rest. He called upon the Packard Aid Association, and his wife notified the foreman. The "nurse" called to see him and he believed every one had been notified. When the foreman returned to his job he was told he had been cleared from the rolls "A. W. O. L." (Detroit Rec. 207, 208). After a month's delay he was put on as a supervisor in the Materials Division.

The Company admits that a mistake was made in this case. It had notice of Mr. Taube's illness, but says he was not satisfactory as a foreman, and it was only a matter of time before his assignment would have been changed (Detroit Rec. 3238). For the time he lost through no fault of his own, Mr. Taube would appear to have an unresolved grievance.

8. **Demand of the foremen that greater weight be attached to seniority in promotions, demotions, and lay offs of supervisors.** The foremen claimed that Packard has not established any seniority recognition system for its supervisors and does not recognize seniority at all (Detroit Rec. 126). Witness Traen said that in case he were demoted he would have no seniority beyond the time when he was promoted from the ranks. This does not appear to be true, as Article III of Section 21 of Union Agreement with rank and file unit provides that foremen or assistant foremen who had seniority as rank and file employees before promotion and who are demoted to the ranks "shall resume their seniority with the Company on the same basis as

any other employee" (Detroit Rec. 3208). In connection with seniority in this case, the seniority provision of the Ford Agreement was read into the record apparently with a view of showing what the foremen believed to be a reasonable provision regarding seniority.

Witness Turnbull for the Union asserts that the Ford Agreement is as good a one as could be worked out, and that the whole matter involved using common sense. This witness said: "If a man is not capable of doing a job, all the seniority in the world cannot keep him on the job" (Detroit Rec. 191). Apparently the foremen desire seniority to apply not only in lay-offs and promotions but in distributing work and in promotion to better positions and the like (Detroit Rec. 202).

The Company's position on the issue of seniority is stated both in the testimony and in the brief. The Company asserts that the form of seniority which is possible for the rank and file is not possible as regards supervisors. The Company asserts that a large proportion of its supervisors comes from the rank and file. The Company says that the seniority plays a large part in promotions (Detroit Rec. 3217), but that it must reserve the exclusive right to make promotions. The Company and the foremen do not appear to disagree substantially on the principle of seniority if abilities are equal, but they do differ widely on the application of seniority.

9. **Complaints of foremen concerning promotions, demotions and discharges.** This subject matter is intimately connected with the grievance procedure. Instances were presented of some supervisors who were passed over in promotion or who were transferred on grounds of discipline, more in the nature of showing how seniority was not observed or the maner in which the Foremen's Committee adjusted grievances. In one case it was said a man named Morgan without any experience whatever was put in charge of a job (Detroit Rec. 200). The Company in answer says that man was promoted purely on the basis of ability, after he had been with the Company from July, 1942, until April, 1944 (Detroit Rec. 3227).

The Association asserted that a foreman named Higgins was making so much on an hourly basis that the Company decided to put him on salary, whereupon Mr. Higgins (the foreman) quit. The Company claimed that Mr. Higgins is on salary at the present time and had not quit the Company at any time, he being continuously in the employ of the Company since 1934 (Detroit Rec. 3238). Witness Elias was discharged because he had, contrary to orders, caused a box containing spare parts which weighed 1080 pounds to be marked 1,000 pounds. (See testimony of Mr. Elias, pages 212-223.) The Company claims that what the foreman had done was contrary to instructions received from the Army Air Force, which was unable to handle boxes in excess of one thousand pounds, and also that falsifying the weights on an interstate shipment might subject the Company to a charge of defrauding the railroad (Detroit Rec. 3232). It was not disputed that the foreman was back in production (Detroit Rec. 313).

It was said that on the eve of the strike a foreman named Wigington was made a superintendent, and it was asserted that this was done to prevent him from going on strike (Detroit Rec. 187). The Company asserts that the work stoppage occurred on May 3rd, whereas the promotion was on June 1st (Detroit Rec. 3228), and points out that keeping one man out of 872 at work would do little good (Detroit Rec. 3230).

The grievances submitted do not lead to the conclusion that there are serious grievances on grounds of improper promotions, transfers, or discharges.

10. **Collective bargaining with supervisors and grievance procedure of supervisors at Packard.** Although Foreman Traen said that there is no way to settle a grievance other than to quit (Detroit Rec. 126), his statement is in conflict with the rest of the testimony pertaining to Packard.

For a time in 1942-43 there were discussions between management and committee of three foremen, representing the Packard chapter of the Foreman's Association of America. At the first meeting in December, 1942, Mr. Keys

was present and the aims and purposes of the Association were discussed. Mr. Weiss, Labor Relations Director of the Company, then expressed the view that the Foreman's Association was, or would become affiliated with the C. I. O. and this was denied by Mr. Keys (Detroit Rec. 114). There were one or two meetings after the December meeting. An election was held on February 24th, 1943, to determine whether the Association would be the Bargaining Agent for the foremen (Detroit Rec. 113). The eligibility list at that time was six hundred ninety-three. Disregarding challenged and defective ballots, four hundred eighty-six votes were cast for the Foreman's Association while only two votes were against it (Detroit Rec. 113). This election was followed by a dispute over recognition. The Company stated that there would be no further meetings. Since that time a committee of one or more foremen, which had been "unofficially" recognized as a Committee in discussions with Management (Detroit Rec. 115). The procedure seems to be for a supervisor feeling aggrieved to come to Witness Turnbull, who arranges for one of the higher officials to see the complainant. Mr. Turnbull has acted as a contact man, as he never goes in with the aggrieved man (Detroit Rec. 174).

The Association takes pride that each discharged supervisor has been given a job somewhere in the plant—either as foreman or in the ranks (Detroit Rec. 220). In this case the foremen made a significant concession. A part of the questions asked by Mr. Keys, national president of the Foreman's Association of America, were:

> Q. " . . . they submit them (grievances) to the Committee that has been representing them to the Employer and if I am correct, I believe the Employer has corrected most of the grievances?
> A. That is right.
> Q. Through the Committee?
> A. That is right.
> Q. That Committee is still functioning?
> A. It is" (Detroit Rec. 115-116).

The Packard Motor Car Company asserts (Company

Brief 25) that it has always refused to deal collectively with the Foreman's Association. The company's witness, Mr. Denison, stated that he is in accord in principle with many of the foremen's demands. He believes that it is "fundamental" that the foreman receive more compensation than the highest man under him (Detroit Rec. 3241). He believes in the principle of paying foremen for overtime, within certain limits (Detroit Rec. 3242-3243), and that there should be twelve days per year allowed foremen for justifiable absence (Detroit Rec. 3243). He believes in the principle of seniority (Detroit Rec. 3244-3245); does not believe in docking for absence or tardiness, within limits (Detroit Rec. 3245), and concedes that there should be easy access from the lowest level of supervision to the highest (Detroit Rec. 3246). The essential position of the Company is that it will deal with its foremen as **individuals** but not as members of a group.

This question was asked Mr. Denison:

> Q. "If you accept those various principles would you be willing to incorporate them into an agreement with the Foreman's Association?
>
> A. That is assuming that we would be willing to write an agreement. If we were forced to bargain collectively with the foremen, I do not think we would have any hesitation to establish those principles" (Detroit Rec. 3246).

It would appear that much of what the foremen are requesting is not in the opinion of the Company unreasonable, **in itself** (Detroit Rec. 3246). It refuses to accept the principle of collective bargaining.

That the "unofficial" handling of grievances at Packard has been effective is suggested when the foremen say that practically all the grievances that the Association had with the foremen have been corrected, and the Company on its part asserts that it agrees in principle with the specific demand of foremen **aside from recognizing collective bargaining and grievance machinery.**

The Company believes that its set-up for man-to-man,

up the line conferences between supervisors and top management has been successful, but that it is being circumvented in favor of the present approach (Detroit Rec. 3263). The Panel recommends that, to assure a more effective handling of grievances, the Board direct the company to institute a grievance procedure in accordance with the recommendations of Section XXX.

XXIII. Republic Steel Corporation.

1. **Background.** Republic Steel Corporation is a large integrated steel corporation—the third largest in the country. The plant here involved is situated in Cleveland, Ohio, and was originally designed for production of high quality sheet steel to be used principally in the automotive industry. In June, 1941, it erected a new building and rearranged its equipment and by the end of January, 1942, it was rolling, shearing, and shipping plates for the building of ships.

The plant involved in this proceeding is known as the 98-inch continuous strip mill. The Company at the present time employs some 60,000 persons in its operation which extends over the country, but the strip mill at the present time has about 751 employees working under 65 supervisors (Detroit Rec. 3810—Company Exhibits 2 and 3).

The foremen in the 98-inch Strip Mill of the Company received a charter from the Foreman's Association of America on July 1, 1943. Sometime during the summer the Association requested the management for a conference for bargaining purposes, which was denied. On October 8, 1943 the foremen walked out on an unauthorized strike over the action of the Company in appointing a man from another plant as a foreman in the Strip Mill. Upon their return, October 10, five foremen were discharged and the Association notified the Company of its intention to strike in 30 days under the terms of the War Labor Disputes Act. Its stated grievances included the unreasonable discharge of the five foremen and the typical complaints

filed against Detroit companies, namely: recognition, negotiation to correct grievances, sick leave allowances, seniority, temporary pay adjustments, vacations, and overtime. The discharge case being certified to the War Labor Board on November 1, 1943, the strike notice was withdrawn (Foremen's Association of America Exhibit 30). The discharge cases have now been heard by the National Labor Relations Board and a decision is awaited (Detroit Rec. 3826). The remaining issues, except recognition, are presented to this Panel.

Of the 65 foremen in the plant about 40 belong to the Foreman's Association of America. These foremen are usually called "turn foremen" due to the fact that each takes in rotation one of the three shifts which the plant works. General foremen are not members of the Foreman's Association of America.

2. **Rates of pay.** Foremen at Republic Steel are being paid under one of three methods: twenty-five foremen are paid on salary, thirty-seven on day rates and three on hourly rates (Company Exhibit 3, Detroit Rec. 3715). At the time the chapter of the association was formed only daily-rated supervision was eligible for membership. Both salaried and hourly in addition to daily-rated men are now admitted. In addition to the daily rate, the foremen are paid fifteen and one-half cents per hour; an adjustment which was granted when a wage increase was given to the C. I. O. (Detroit Rec. 3723). The Company offered evidence that in 1941 the range of earnings for foremen was $200 to $778 per month, and that for 1944 those same jobs range from $265 to $838 per month (Detroit Rec. 3814, Company Exhibit 4, Company Exhibit 5).

The Company introduced these figures merely to show that the men "are being handsomely paid" (Detroit Rec. 3815). The day rate is a peculiar type of remuneration. If a foreman reports for work in the morning and goes home in an hour, he gets a full day's pay. He is not docked for being late (Detroit Rec. 3852). The fifteen and one-half cent additional bonus is paid only for the hours

actually worked, that is if a man making $10 a day did one hour's work he would receive $10.15 (Detroit Rec. 3852, 3853). Mr. Hyland, the only witness for the Company, states that the foremen are under the jurisdiction of the Internal Revenue Department and that he has been unable to secure increases in salary which he had recommended. It has not been shown that the salaries paid are inadequate or out of line with what is paid in the industry in the Cleveland area.

A complaint was made that when a daily-rated foreman acts for a higher-rated foreman he gets no increase in compensation (Detroit Rec. 3738). Neither does he get any increase when he acts in the place of a foreman on vacation (Detroit Rec. 3834). The Company regards higher pay in such cases as unnecessary. The assignment of a man to a higher paid position is to be regarded as an opportunity for the employee to learn a more responsible job. "They are being given a privilege, not something they should be paid for" (Detroit Rec. 3835).

3. **Complaint that the company fails to pay foremen for overtime.** The chief complaints of the foremen concern overtime pay, or as they assert the lack of it, and a premium which they consider to be a bonus. The chief witness for the Association claims that no overtime is paid (Detroit Rec. 3719), and he asserts that the men are under the Wage and Hour Law and should be paid overtime. The foremen point to a proceeding before the Wage and Hour Board in the Cleveland area, which resulted in a decision that back pay for overtime should be paid to some two hundred twenty-seven men (Detroit Rec. 3721). In April, 1943, the Company paid this retroactive back pay, and thereafter gave what the foreman claimed is a bonus and which is not considered by them to be payment for overtime at all. Neither, say the foremen, is any premium pay given for Sunday work (Detroit Rec. 3724).

The Company explains the overtime situation thus: When the Wage and Hour Law was passed (1938) Republic attempted to classify its employees on the ground

of exemption, and, while the supervisors in the 98 inch strip mill were given a $30 a week guarantee, they were not notified of it and hence were classified as non-exempt hourly-rated employes (Detroit Rec. 3839).

In connection with the provisions for overtime the Company introduced Exhibits 10-10A which outlined the overtime payment plan for exempt salary and day rate employees and the ruling of the National War Labor Board dated May 22nd, 1943, approving the plan effective retroactively to April 16, 1943. In brief the program is this: Supervisors are on a 40-hour week and for every hour up to 48 they get time and one-half; for the next four hours they get the equivalent of double time. If they work 52 hours a week they are paid for 60 hours. The whole program, however, is based on the ingot capacity operations of the Company, and if the operations equal or exceed 80 per cent of the capacity there is a bonus. The end result is that when a foreman works overtime he is compensated for time and one-half up to 48 hours and double time to 52 hours (Detroit Rec. 3842). The Company claims that this bonus plan was introduced for the purpose of paying overtime (Detroit Rec. 3851) and it so appears in its ruling of the Regional Labor Board (Company Exhibit 10A). In view of the restrictions of the Wage Stabilization Unit the Panel cannot find that there is any unresolved grievance as to overtime.

4. **Vacation.** There is a vacation arrangement for supervisors at Republic which the Company asserts is a liberal plan (Detroit Rec. 3726). The amount of days off, with pay, vary with the number of years the employe has been with the Company (Detroit Rec. 3837). The Union admits that the supervisors get the same vacation as the rank and file which is three days for five years, and corresponding increases in days off, depending upon length of service.

The evidence fails to establish that there is a serious grievance over vacation policy.

5. **Sick leave.** There is no sick leave plan (Detroit Rec. 3726). The Company does not believe that it is a good

thing (Detroit Rec. 3820). It says a man who is injured on the job receives workmen's compensation; the man who is taken sick because of industrial illness is likewise taken care of, and Republic at a great expense has established a group insurance, health and sickness plan, which has been taken advantage of with about 98 per cent of the employes (Detroit Rec. 3831, 3832, Exhibit 8). It appears that those on sick leave receive no compensation from the Company. The Panel's views on sick leave are expressed in Section XXVI of this report.

6. **Seniority.** The Association claims that it organized because the foremen have no seniority rights (Detroit Rec. 3714), and that on a higher job the senior man should be installed (Detroit Rec. 3737). The position of Management has been stated in the record to be that "It is Republic's position that seniority has no place in Management" (Detroit Rec. 3827). Nevertheless it is admitted that seniority might be given consideration (Detroit Rec. 3830). This issue remains unresolved.

7. **Promotions, demotions and discharges.** This subject is one that concerns the foremen. The testimony is limited to the case of a man promoted unjustifiably, in the opinion of the foremen, and to the case of five men discharged.

The Company qualifiedly recognizes seniority in making promotions (Detroit Rec. 3828), and says it is the established practice to promote men from the organization before any attempt is made to go outside for foremen. The appointment of Bennett led to the walkout of October 8-10, 1943.

The Bennett case seems to have been thus: a workman came into the plant and was put on different jobs as a day-rate foreman, but foremen were not advised of his position. When Mr. Morgan, President of the foremen, went to see Mr. Dorsey, the hot mill superintendent, to determine what Mr. Bennett's position was, he was told that Mr. Bennett was a foreman, as of that day (Detroit Rec.

3745). The other foremen considered Bennett incapable and believed that his appointment was not right. They promptly ceased work (Detroit Rec. 3745-3746). When they returned to their jobs two days later, five of their number were discharged (Detroit Rec. 3746).

The Association did not know much about Mr. Bennett (Detroit Rec. 3754) and while it admitted the Company should train foremen to replace those going into the Armed Service, it insisted there were plenty of men in the plant who could do the job (Detroit Rec. 3766). The Company claims that replacements were made by men who worked in the plant (Detroit Rec. 3862) and who were qualified to fill the positions offered (Detroit Rec. 3863). The Company contended that the newly promoted foreman was able to do the work (Detroit Rec. 3868); that he was transferred from another plant where he had been a production worker; that Mr. Bennett was being trained to learn what was going on in the different units; and that he was entirely in training not production (Detroit Rec. 3872). The Company insists that there was no cause on the part of the foremen to strike, since the Company merely put one of its own employees in training to become a supervisor when it was necessary to replace those going into the service. The failure of the Company to explain its action to the foremen was unfortunate. Far more serious, however, was the action of the foremen in attempting to control decisions of management by striking.

The discharge of the five foremen by the Company resulted in a strike notice which was later withdrawn when the case was certified to the War Labor Board. The discharge cases are now pending before the National Labor Relations Board on complaint of the Association that the discharges are discriminatory.

8. **Grievance procedure.** There appears to have been no formal grievance procedure at Republic heretofore. The foremen objected to some of their men receiving a bonus while others did not. Mr. Morgan, President of the Association, attempted to get in touch with Mr. Hyland, who

said the door was open for individual bargaining but he would not talk on Union matters "unless he had to". It was said that unless the foremen did not get results from their immediate superiors that they ought to have grievance procedure to take them to the top (Detroit Rec. 3782). The Company denies that there was ever any collective bargaining relations with any organization representing supervisory employes. When Mr. Hyland received a letter requesting a conference to discuss foremen demands, he told Mr. Morgan, the President of the Association, that in view of the Maryland Drydock decision and the traditional policy of the Company, he could not deal with the Association as a collective bargaining agent, but would listen to any individual grievance (Detroit Rec. 3820).

Although the foremen complain because there is no grievance procedure (Detroit Rec. 3725-3728), there is no evidence that a demand for grievance procedure was ever made upon the Company.

The position of the Company is unequivocal—an individual may go to the General Manager of the Cleveland Division (Detroit Rec. 3744), and the policy of the Company is "the open door" (Detroit Rec. 3775). One of the witnesses for the Union stated that while his idea of a grievance procedure was not necessarily one that would procure for him the results he sought, he expected other than standard answers (Detroit Rec. 3780). What the Association desires as far as grievance procedure is concerned is what the rank and file now has (Detroit Rec. 3784). The Management contends that any supervisor may have immediate recourse to his superior (Detroit Rec. 3849-3851) and that a man who has worked himself up to the position of supervisor does not need anyone to speak for him (Detroit Rec. 3879). The Panel recommends that the Company be directed to establish grievance procedure in compliance with the recommendations of Section XXX of this report.

Board's Exhibit No. 19

PART FIVE.

CONCLUSIONS AND GENERAL RECOMMENDATIONS OF THE PANEL.

XXIV. Compensation of the Foremen.

1. **The general level of compensation.** Although the general level of compensation of supervisors is an issue in some cases, virtually no comparative data on the compensation of supervisors in the companies involved in these disputes and in other companies was presented to the Panel. The general level of compensation does not appear to be a serious complaint. The Panel finds that the supervisors in the cases before it are in general well paid. The supervisors who are department heads (in most of these cases entitled "foremen") receive monthly earnings exclusive of overtime ranging from $200 to $350. Assistant general foremen and general foremen receive more. The temporary supervisors, working leaders, and leading men in the shipyards, who supervise smaller groups of men than the department heads in manufacturing plants, receive compensation ranging from $.91 an hour to $1.40 and $1.67 an hour.

In many cases before the Panel there is substantial difference between the straight time earnings of supervisors and their "take home" earnings, because the supervisors are putting in considerable overtime beyond the standard working week. The "take home" earnings for supervisors who are department heads range from $275 to $650 a month. Information on the earnings of temporary supervisors, working leaders and leading men in the two shipyards is not in the possession of the Panel. These earnings put nearly all of the supervisors who are department heads in the upper third of income receivers in the nation as a whole. The department heads in these cases are among the highly paid employees of American industry.

The following table sets forth the information on standard rates of pay and the take-home earnings submitted for the various classes of supervisors by the companies involved in these proceedings:

Company	Classification	Straight-Time Rates	Hourly Basis of Rates	Take-Home Earnings	Source Reference
Aeronautical Products, Inc. (a)	Foreman	$ 1.20-1.90 (b)	40 hr. week	$ 57.75-122.00 (d)	
	Assistant Foremen	1.40-1.60 (c)		450.00-550.00 (e) 78.00- 84.83 (d)	Company Exhibits 3 & 4
Baldwin					
	Southwark Plant				
	Superintendent	800.00		800.00	
	Assistant Superintendent	450.00		450.00	Rates obtained from company by telephone
	General Foreman	....		....	
	Foreman	370.00-410.00		370.00-410.00	
	Assistant Foreman A	....		....	
	Assistant Foreman B	....		....	
	Foundry (f)				
	Superintendent	550.00		1070.00	
	Assistant Superintendent	483.00		788.00	
	General Foreman	400.00-433.00		495.00-558.00	
	Foreman	290.00-335.00		350.00-590.00	
	Asst. Foreman A	....		....	
	Asst. Foreman B	....		....	
	L & O				
	Superintendent	450.00-675.00		450.00-675.00	
	Assistant Superintendent	500.00		500.00	
	General Foreman	375.00-425.00		375.00-425.00	
	Foreman	350.00-400.00		350.00-400.00	
	Asst. Foreman A	1.65		368.94	
	Asst. Foreman B	1.55		346.58	
Bohn Aluminum Company	General Foreman	60-95 (d)	No fixed work week		Book VIII, p. 830. Data requested by Chairman Slichter and submitted by Company, January 1945
	Foreman I	60-90			
	Foreman II	55-80			
	Foreman III	50-75			
	Asst. Foreman	50-70			
Briggs Manufacturing Company	Foreman	284.18 (g)	40 hr. week	415.90 (h)	Company Exhibits 6, 9 & 10

	Straight-Time	Hourly Basis	Take-Home	Source

turing Company

Company	Classification	Straight-Time Rates	Hourly Basis of Rates	Take-Home Earnings	Source Reference
Chrysler	Foreman	255.12 (i)	40 hr. week	331.66 (h)	Company Exhibit 5
	General Foreman	295.29		383.88	
Federal Shipbuilding and Drydock Company	Working Leaders	1.25 (j)			Leadingmen's Organizing Committee, Statement, pp. 5 & 6
	Second Class Leadingmen	1.33½		51.26-101.14 (k)	
	First Class Leadingmen	1.40			
Gar Wood Industries, Inc.	Foreman	....	No fixed work week	1.45 (l)	Exhibit 4
Hudson	Asst. Foreman	330.00	48 hr. week	407.00 (h)	Company Exhibit 17
	Foreman	350.52			
	Assistant General Foreman	388.50			
	General Foreman	390.00			
Maryland Drydock	Temporary Supervisors	.91-1.37 (i)		321.75 (h)	Exhibit of data submitted by company in response to request by Chairman Slichter during Hearing, and telephone conversation with company.
	Working Leaders	1.07-1.48		352.75	
	Leaders	1.25-1.67		397.55	
Murray Corporation	Department Supervisors	370.00 (m)	40 hr. week	390.00-670.00 (n)	Company Exhibit 8
	Shift Supervisor	350.00		355.00-535.00	
	Section Supervisor	315.00		300.00-625.00	
New York Shipbuilding	Sub-foremen I	75.84	40 hr. week	111.19	Statement on Behalf of N. Y. Shipbuilding, pp. 6, 7
	Sub-foremen II	71.34		99.66	
	Sub-foremen III	63.84		95.48	
	Cleaner Sub-foremen	57.12		84.46	
Packard	Assistant Foremen, Foremen, General Foremen, Special Assignment Men	282.18 (p)	40 hr. week	496.54 (h)	Company Exhibit 24

Company	Classification	Straight-Time Rates	Hourly Basis of Rates	Take-Home Earnings	Source Reference
Republic Steel Corp.	General Foreman	335.00-400.00	40 hr. week	475.89-562.07 (q)	Company Exhibit 5 and telephone conversation with company
	Foreman Salary	225.00-305.00		289.48-453.45	
	Day Rate	9.24- 10.49			
	Turn Foreman				
	Salary Rate	285.00-410.00			
	Day Rate	8.24- 10.44		273.96-583.41	
	Hourly Rate	1.22 per hr.			
	Assistant Foreman	9.24 per day		265.66	
	Loader Foreman	9.74 per day		304.45-324.09	
	Warehouse Foreman	9.24- 10.24 per day		274.48-287.72	
	Turn Rollers	525.00-750.00		763.45-988.45	

(a) Rates shown are not a function of the earnings for this Company since the rates have been recently approved and indicated earnings are based on previous rates.

(b) There are a series of rate ranges for each department. The figures shown represent the lowest and highest rates for all departments.

(c) Rate range for assistant foremen. Average straight time hourly rate based on former rate ranges for foremen and assistant foremen is $1.43 per hour.

(d) Weekly straight-time earnings.

(e) Monthly salary for two salaried foremen.

(f) The employees receive a monthly bonus which is included in the earnings figure. The employees in the other two divisions receive year-end bonuses which are not shown in the earnings figure.

(g) Average rate—monthly basis.

(h) Average "take-home" pay, monthly basis.

(i) Company supplied information by telephone in response to request.

(j) Hourly rates.

(k) Weekly "take home" pay.

(l) Average earnings of first-line supervisors. Salaried supervisors are not included.

(m) From letter dated October 29, 1944.

(n) Monthly salary.

(o) Average weekly rate for 40-hour week.

(p) Average monthly earnings for 40-hour week.

(q) Average monthly earnings, indicating lowest and highest earnings in each classification.

Although serious complaint is not made by foremen concerning the general level of their compensation, foremen complain in nearly all cases about specific aspects of their compensation, such as failure of the companies to pay for overtime work; failure of foremen to earn as much as some of the rank and file workers whom they supervise; failure of the companies to pay premiums for night work; uncertainties in the calculation and purposes of special bonuses; inequalities in the relative compensation of foremen and other supervisors within the same plant.

2. **Failure to pay for overtime worked.** In some cases (Baldwin, Bohn Aluminum, Chrysler, Gar Wood, Hudson, Packard, and Republic) complaint was made that the salaried foremen are not paid for overtime work. Previous to the war it was a fairly general practice for firms not to give overtime pay to foremen who were on a salary. The overtime which foremen worked during busy times was regarded as offset by the fact that they were usually kept on at full pay during slack seasons and often even in bad years, and, in many plants, by the fact that they received vacations with pay which the rank and file usually were not given or by the fact that they were given sick leave which the rank and file usually did not receive.

The defense program and later war production have required foremen to put in large amounts of overtime. Many managements continued for some time the practice of not paying salaried foremen for overtime. Consequently, during 1940, 1941, and even parts of 1942, foremen in many companies worked a large amount of overtime without compensation. The record in these proceedings does not show to what extent foremen in the cases before the Panel worked overtime without compensation several years ago. At the present time all of the companies involved in these proceedings, except the Baldwin Locomotive Works, now recognize and now make some provision for paying supervisors for overtime. These arrangements and the dates when the arrangements became effective are set forth in the following table:

Board's Exhibit No. 19

Actual Practice and Effective Date of Overtime Provisions for Supervisory Employees.

Company	Overtime Provision	Effective Date
Aeronautical Products	1. Time and one half after 8 hours per day and 40 hours per week, for the sixth day of work and for work on holidays. 2. Double time for the seventh work day.	Prior to issuance of Executive Order 9240 in September 1942
Bohn Aluminum	20 per cent after 5 days per week.	No date indicated
Baldwin Locomotive	a. Foremen 1. Work week consists of six eight-hour days. 2. No overtime payments for hours after regular work day or work week or for Saturdays, Sundays, or holidays. 3. Bonus paid as partial compensation.	January 1944
	b. Assistant Foremen 1. Same conditions as apply to production workers.	No date indicated
Briggs	Time and one half after 8 hours per day and 40 hours per week. Double time for seventh day.	December 1, 1942
Chrysler Corp.	1. Six-day week—20 per cent extra. 2. Increase to 30 per cent for six-day week. 3. Time and one half after 40 hours per week for those whose base salary is $350 per month or less on a 40-hour week basis. 4. 80 per cent of time and one half for all hours in excess of 48 hours per week for those whose monthly salary on a 40 hour week basis exceeds $350 but does not equal $400 per month. 5. 60 per cent of time and one half for hours worked in excess of 48 per week for those whose base salary at 40 hours per week exceeds $400 per month but not more than $450 per month.	August 1941 June 1942 November 1943
Federal Shipbuilding and Drydock	1. Time and one half after 8 hours per day. 2. Five eight-hour days per week. 3. Time and one half for sixth day. Double time for seventh day. 4. Time and one half for holidays.	July 1942 July 1942

Board's Exhibit No. 19

Company	Overtime Provision	Effective Date
Gar Wood	1. Request made to pay overtime for 13 supervisors. Half the requested amount approved by Treasury.	June 1944
	2. Increase of 20 per cent to 30 per cent when work week increased to 48 hours.	No date indicated
	3. Work on Sunday compensated for by equivalent time of duty.	No date indicated
Hudson Motor Car	1. Straight time pay for hours worked between 48 and 60.	June 1943
	2. Work week extended to six days and 20 per cent increase paid.	March 1942
	3. Time and one half for seventh day and for work on legal holidays.	March 1944
Maryland Drydock	All work performed outside of regular shift at time and one half in addition to overtime provisions.	June 1942
Murray Corporation	1. Straight time for Saturday.	1940
	2. Straight time after 9 hours per day and straight time for Saturday and Sunday contingent upon 40 hours having been worked Monday through Friday.	April 1941
	3. Straight time after 40 hours.	February 1942
	4. Straight time after 8 hours per day and for Saturday. Double time for seventh consecutive day and time and one half for national holidays worked.	April 1942
New York Shipbuilding	1. Work week of 52 hours paid for 58 hours.	October 1943
	2. Sixth and seventh shift overtime basis.	June 1942
	3. Time and one half in addition to regular days pay for work on holidays.	June 1942
Packard Motor Car Co	1. Time and one half for sixth and seventh day if employee has worked previous 5 days.	March 1942
	2. Time and one half after 8 hours per day for employees in departments scheduled to work more than 8 hours.	March 1942
	3. Time and one half for work on six legal holidays.	March 1942
	(Above applied to employees previously exempt.)	
Republic	Time and one half for hours between forty and forty-eight and double time for hours between 48 and 52 on a graduated scale as production exceeds 80 per cent of capacity.	April 1943

Except in the Baldwin case, the Panel does not find that failure to pay for overtime work is an unresolved grievance. The Panel's recommendation in connection with the Baldwin case is contained in its findings for that case. In some cases it is true companies have sought permission from the Salary Stabilization Unit to pay for overtime on a more liberal basis than the Salary Stabilization Unit has been willing to approve. Such cases, however, should not be regarded as representing unresolved grievances. Under the stabilization policy, an agency of the government empowered to act should be regarded as settling the case and should not have its action reversed by a coordinate agency.

3. **Rank and file workmen earn more than the foremen.** In some cases (especially in Baldwin, Chrysler, Packard, and Republic) complaint was made that the men under foremen earn more than the foremen. Several years ago, before extra compensation for overtime had been given foremen, there may have been fairly frequent instances in which some rank and file workers earned more than the foremen who supervised them and who worked **approximately the same number of hours** as the rank and file workers. The record in these proceedings contains no specific evidence on the point, but articles in the business press indicate that several years ago the situation complained of was common. In virtually every case of subordinates earning more than foremen which was presented to the Panel from any of the thirteen companies involved in these proceedings the reason was that the subordinate worked more hours in the course of the pay period. The only exceptions cited in the record were the Packard Company (Detroit Rec. 3203), where the company cited instances of specialists who earned more than the foremen. In the Baldwin case (Baldwin Rec. 343) the company cited instances where, under the existing wage scale, certain specialists **could** earn more than the foremen, but no instance of this occurring was presented. Although few instances were cited in the record, cases may well arise from time to time in which a highly paid specialist may be assigned to a lower paid foreman. The Panel does not find

that the failure of foremen to earn as much as their subordinates is generally to be regarded as a legitimate grievance in cases where the subordinates work more hours. Nor does the Panel believe that every instance in which a subordinate might earn more per hour than a foreman would constitute a legitimate grievance. No grievance of this latter sort requiring corrective action by the Board has been presented to the Panel.

4. **Failure to pay a bonus for night work.** Eight of the companies involved in these proceedings either pay a bonus for night work to some or all supervisors on night shifts or have sought permission to pay one. These companies and the night shift premiums paid by them to supervisory employees are:

Aeronautical	Hourly-rated foremen 5 cents per hour—Jan. 1942.
Baldwin	Assistant foremen receive same premium as production workers; salaried foremen receive more.
Chrysler	Five per cent on both second and third shifts.
Federal Shipbuilding and Drydock	Seven per cent for second and third —June 1941.
Maryland Drydock	Seven per cent for second and third shift—June 1942.
New York Shipbuilding	Seven per cent for second and third shift—June 1941.
Packard	Five cents per hour. Application of company to pay 5 per cent denied by Treasury Department.

No night bonus is paid foremen at Briggs, Gar Wood, Hudson and Murray. At Gar Wood and Hudson, however, the managements assert that a night shift premium is paid in reality although the wage scale does not show it. The day-shift supervisors are said to have greater responsi-

bilities than the night-shift supervisors. The day-shift supervisors are responsible for carrying out work and assuring a supply of materials for both day shift and night shift operations. Greater responsibility for maintaining tools and equipment sometimes falls on the day-shift supervisors (Detroit Rec. 3511 and 3632). Paying night-shift supervisors the same rates as day-shift supervisors who have greater responsibility is said to be equivalent to paying a night-shift premium.

The Panel believes that where the responsibilities of day-shift and night-shift supervisors are essentially the same and where the rank and file employees receive a night-shift bonus, a corresponding night-shift bonus should be paid to the supervisors provided this is the practice in the industry and the area. The Regional Boards are in the best position to determine area and industry practice. Consequently, the Panel recommends that cases on this point which are not within the jurisdiction of the Salary Stabiliaztion Unit be handled through the respective regional boards. The Panel calls attention to the fact that the payment of night shift bonus will not necessarily prevent complaints. Witness Elliott for the foremen in the Chrysler Corporation testified that complaints came to him from supervisors because of the reduction of pay on transfer to day work (Detroit Rec. 1658).

5. **Uncertainties concerning the calculation and purposes of special bonuses.** Some companies award special bonuses to foremen at the end of the year. In at least one instance a bonus which is based on production has the purpose, according to the company, of compensating for overtime. The Panel believes that the uncertainty concerning the purpose of year-end bonuses and the methods of calculating them is real, and that it constitutes a problem. While the Panel believes that managements should do their best to make clear both the purposes of bonuses and the method by which they are computed, it realizes that, as far as year-end bonuses are concerned, uncertainties concerning their purpose and method of calculation may to some extent be unavoidable. Year-end bonuses not

infrequently are given for outstanding service or in recognition of performance and qualities which are difficult to appraise, and one of the objects of such bonuses is to afford special assistance to meet exceptional situations which had not been foreseen. For this reason the difficulties of which the foremen complain cannot be entirely eliminated.

6. **Inequalities in the relative compensation of foremen or other supervisors within the same plant.** In all of the cases, except Murray and New York Shipbuilding, the foremen or other supervisors complain of internal inequalities in the wage scale. The Panel's findings on these complaints are given above in connection with the discussion of specific cases.

The Panel believes that periodic review of foremen's rates is necessary to prevent the growth of inequities. In the Murray Corporation of America, the rate of each foreman is now reviewed as a regular matter of managerial routine every six months. A similar review may be in operation in other plants involved in these disputes before the Panel. The Panel believes that managements should review foremen's salaries and rates at regular intervals. It recommends that each company institute procedures whereby all salaries and rates of foremen are reviewed every twelve months. Such review would enable the employer to remove inequalities and to reward merit. Inequalities which are not removed in the course of the periodic review of rates may be taken up as grievances under the grievance procedure recommended by the Panel in Section XXX of this report.

XXV. The Complaint of Foremen That Higher Management Permits "Short Circuiting" of Foremen in Handling Grievances or Fails to Give Foremen Proper Support in Dealings With the Union of Rank and File Employees.

Witnesses from the foremen in the Chrysler Corporation, Packard Motor Car Company, and in the Gar Wood Industries (Detroit Rec. 262, 188, and 581) cited specific in-

stances in which it was alleged that superiors of foremen "short circuited" the foremen by taking original jurisdiction over grievances or failed to give the foremen the support to which the foremen felt entitled when differences arose between the foremen and union representatives in the foremen's department. These instances have been discussed in the findings of the Panel in the specific cases. It would be surprising if, among the several thousands foremen involved in these proceedings, no case of "short circuiting" or failure to give proper backing to the foreman could be found. The companies, however, contend that they are careful to require that the first step in the grievance procedure be observed and that the foremen be given the proper support in getting their instructions observed and in administering discipline. The companies have put into the record considerable evidence in support of their contention that the foremen are well supported by higher management, that they are not afraid to impose discipline when discipline seems to be called for. The record does not support the conclusion that the companies involved intend to allow the foremen to be by-passed in handling grievances, nor does it support the contention that these companies fail to back up their foremen when the foremen attempt to impose discipline or to exercise the discretion permitted to them under the agreement with the rank and file employees. The fact that the foremen do not always participate in the handling of appeal cases is not found to be a legitimate grievance.

XXVI. Demand for Sick Pay or for More Liberal Sick Pay.

In a number of cases before the Panel the foremen ask that sick pay be provided or that existing arrangements for giving sick pay be liberalized. The record indicates more or less confusion or ignorance among the foremen as to (1) whether a sick plan actually is in effect and (2) what the provisions of the plan are. In the Packard case a witness on behalf of the foremen asked that a sick leave plan be put into effect. The Company, however, has a sick leave plan (see Company Ex. 28) and has unsuccessfully applied to the Treasury Department for permission to lib-

eralize its plan (Company Brief, p. 8). A witness for the foremen in the Briggs Manufacturing Company (Detroit Rec. 355) testified that he did not know what the terms of the plan are. A Company witness testified to a sick leave plan which has been in effect for at least ten years (Detroit Rec. 2129).

The Panel believes that the question of whether or not to institute or to continue a sick pay plan for foremen and the terms of such a plan are properly within the discretion of management so long as the foremen do not contribute to the support of the plan. The Panel finds, however, that there is uncertainty among the foremen in some companies as to whether or not a sick pay plan is in effect, and, if so, what its provisions are. The Panel recommends that managements clear up these uncertainties by informing the foremen whether a sick pay plan is in effect, and, if so, what its provisions are.

XXVII. Fear of Lay Off and Demotions and the Demand of Foremen That Employers Attach Greater Weight to Seniority in Making Lay Offs, Demotions, and Transfers.

The greatest fear of foremen today is that they will be laid off or demoted when cutbacks and cancellations of war orders occur. This fear seems to be a principal reason why the interest of foremen in organizing is out of proportion to the nature and gravity of their grievances. In all of the companies before the Panel, except one, the war has caused enormous expansion of the rank and file workers and a corresponding increase in the number of supervisors. The following are the increases in the number of supervisors which have occurred in five of the companies involved in these hearings. It will be noted that in the case of the sixth company there has been a small drop in the number of supervisors.

Briggs Manufacturing Company,

June 1941 ..... 715 Foremen & General Foremen
July 1944 ..... 1410 Foremen & General Foremen

Board's Exhibit No. 19

Chrysler Corporation,

April 1938..... 35 Foremen & General Foremen

DeSoto-Wyoming plant,

June 1944..... 225 Foremen & General Foremen

Gar Wood Industries, Inc.,

Pre-war ..... 65 Foremen & General Foremen
At date of hearing 131 Foremen & General Foremen

Murray Corporation;

June 1940..... 137 Dept. Shift & Section Supervisors
June 1944..... 562 Dept. Shift & Section Supervisors

Packard Motor Car Company,

1938-1940 ..... 250-280 Foremen
June 1944..... 900 Foremen

Republic Steel Corporation,

First quarter 1941 70 Foremen
Second " 1944 65 Foremen

In the shipyards the proportionate increase in the number of foremen has been even greater. After the war large reductions will occur in the number of supervisors in most war industries. In fact in Aeronautical Products and in the Baldwin Locomotive Works there has already been a sharp reduction in the need for foremen. The inevitability of large reductions in the number of supervisors in war industries introduces a major uncertainty into the lives of nearly all of the foremen involved in these cases. No one knows which supervisors will be retained and which will be demoted or laid off. The supervisors' sense of insecurity is aggravated by the fact that they know little or nothing of the policies, rules, and criteria which will govern the making of demotions and lay offs. In several cases (Briggs, Gar Wood, Hudson, Murray, and Packard), witnesses on behalf of the foremen asserted that no weight is given to seniority.

Board's Exhibit No. 19

The status of foremen when demoted to the rank is determined to a considerable extent by the terms of contract between the employers and the union of rank and file employees. None of the contracts between employers before this Panel and rank and file employees gives seniority on demotion to foremen who were hired from the outside and who served no time with the employer as rank and file employees. With respect to foremen who have been promoted from the ranks the provisions differ. The contract between the Chrysler Corporation and the United Automobile Workers, dated September 10, 1943, specifically provides that an hourly-rated employee who is promoted to assistant foreman, foreman, or to any other supervisory position shall accumulate seniority while working in a supervisory position and, if subsequently transferred to hourly rated work, shall have the seniority ranking he had at the time of his promotion plus the seniority accumulated while working in the supervisory position. The agreement between the Packard Motor Car Company and the United Automobile Workers, dated October 7, 1942 contains in substance the same provision. The contracts between the Briggs Manufacturing Company and Local 742 of the United Automobile Workers, dated September 30, 1943, and between the Hudson Motor Car Company and the United Automobile Workers, dated December 10, 1943, and the Murray Corporation and the United Automobile Workers are less explicit in their language, but appear to contemplate the accumulation of seniority in relation to rank and file workers by foremen who were promoted from the ranks and who had seniority status at the time of their promotion.

Mr. Walter Oakes, representing the supervisory employees negotiating committee in the Maryland Drydock Company, stated (Washington Rec. 18-19) that it was generally the accepted practice in the past to give supervisors, once they were back with the tools, credit for all the time they had spent as supervisors. Mr. Goldstein, counsel for the supervisors' negotiating committee in the Maryland Drydock Company and also general counsel for the Industrial Union of Marine and Shipbuilding Workers of

America, stated that he had been informed that the production and maintenance employees would have no objection, when supervisors were demoted, to having the employee's period of service as a supervisor added to his previous period of service in the last classification where he worked for the company with tools (Washington Rec. 17).

The contract between the Gar Wood Industries, Inc. and Local 250 of the United Automobile Workers apparently provides that rank and file employees who are promoted to the position of foreman shall keep the seniority which they have on the day of promotion, but shall not accumulate additional seniority.

In several other cases (Baldwin Locomotive Works, New York Shipbuilding Corporation, and Republic Steel Corporation) the contracts between the company and the rank and file union appear to provide indirectly for the retention of seniority in relation to rank and file employees by foremen who had seniority status at the time that they were promoted to the position of foreman. These contracts list certain ways in which seniority rights may be lost—such as justifiable discharge or voluntary quitting. Promotion to the rank of supervision is not listed as a way by which seniority rights may be lost. Consequently, foremen who had seniority rights at the time of promotion have not lost them. It is possible that these contracts may be interpreted to permit foremen promoted from the ranks to accumulate as well as to retain seniority. The New York Shipbuilding Corporation on August 30, 1943, issued a statement of management's policy concerning the seniority standing of sub-foremen. This provides for the accumulation of seniority for time spent as a sub-foreman in the case of former rank and file employees who are demoted to the ranks. This matter is discussed in Section XXI of this report. The record before the Panel does not show how the seniority provisions of the contracts in the Baldwin Locomotive Works or the Republic Steel Corporation have been interpreted in the case of demoted foremen consequently the Panel is not able to report whether rank and

file employees who are promoted to foremen in these companies and later demoted retain or accumulate seniority in relation to rank and file employees.

The contract between the Aeronautical Products Company and the United Automobile Workers contains no provision concerning the retention or the accumulation of seniority by foremen who return to the ranks. The labor relations counsellor of the Aeronautical Products Company testified that the rank and file union recognized accumulated seniority if the foreman was previously a member of the union in the plant (Detroit Rec. 3326). The case of a demoted foreman who was previously a member of the United Automobile Workers in some other plant has not arisen, but the labor relations counsellor testified that the possibility of reciprocity in such cases had been mentioned.

The contract of the Bohn Aluminum and Brass Company with the United Automobile Workers apparently does not provide for the retention or accumulation of seniority by foremen who are demoted to the ranks.

The seniority provisions of the contracts between the companies and the rank and file unions are reproduced in Appendix I of this report.

The fear of lay offs, demotions, and transfers has led to the demand that employers give greater weight to seniority in making lay offs, demotions and transfers. This demand was presented to the Panel in every case. The supervisors involved before the Panel in three shipyard cases ask that lay offs among supervisors be governed by "straight" seniority. The leading men in the Federal Shipbuilding and Dry Dock case, for example, proposed the following seniority rule (Union Exhibit No. 2 and New York Rec., August 8, 1944, 219-221):

> "Seniority shall govern whenever it becomes necessary to reduce the number of supervisors. Seniority shall also govern with regard to promotions."

The Foreman's Association of America, however, has not urged before the Panel that lay offs, demotions and trans-

fers be governed by "straight" seniority without regard to ability or merit. It would apparently be satisfied with the seniority rule in the agreement of the Association with the Ford Motor Company. This agreement provides in Section 10 (a):

> "In matters of promotion and demotion the determining factors shall be ability and seniority. When ability is considered to be equal, seniority shall govern promotions and demotions. The final determination shall be ability. If the company's determination of this factor shall be deemed to be unreasonable any claimed violations of this provision may be reviewed and determined through the grievance procedure hereinbefore provided."

The question of which foremen are to be laid off, demoted, or transferred will be one of the most important and difficult problems facing employers and foremen during the next few years. The seniority status of demoted foremen in relation to rank and file workers will also be a difficult and important problem in some plants where the issue has not now been settled.

The Panel does not believe that it would be in the public interest for the National War Labor Board or any other government agency to prescribe a rule to govern managements in deciding which foremen they shall lay off, demote, or transfer. Managements may in their discretion decide to give great or little weight to seniority in making lay offs, demotions, or transfers among the foremen. There is much to be said for giving great weight to seniority where differences in the efficiency of several foremen are small or where a foreman might qualify for a pension by a few more years of service. The Panel, however, believes that management should be left free to assess the relative weights to be accorded to seniority, merit, and present or potential ability when lay-offs, demotions, and transfers of foremen are made.

In particular, the Panel believes that it would be unfortunate for a government agency to require managements to adhere to a straight seniority rule in making lay-offs,

demotions and transfers of foremen. Certainly the principle of rewarding merit and ability requires no apology. This is especially true in the case of executives such as foremen. The efficiency of each foreman determines in substantial measure the efficiency of many men under him and, in some instances, the efficiency of cooperating departments. It may also determine in large measure whether the relations between the company and a rank and file union are harmonious or full of friction and difficulties. Consequently, both the public and the rank and file workers have a strong interest that the positions of foremen be filled by the most capable men available regardless of their length of service.

The Panel believes that great weight should be attached to the dependence of higher management on the competency of foremen. When the managers of an enterprise select foremen to whom they delegate authority and responsibility, they are not relieved of accountability for results. They are expected to pick competent men on whose good judgment and reliability the superior can depend. The Panel calls attention to the fact that foremanships are to considerable extent the seed bed for higher management. Furthermore the men who hold high positions in management are chosen in part for their skill in selecting and developing subordinates into an effective organization. They should be free within broad and reasonable limits to exercise these functions and to select and develop men for greater responsibilities. To require management to follow straight seniority in making lay-offs would seriously restrict the use of foremanships as a developing ground for higher management. It would create serious staff problems of efficiency and morale. For these several reasons the Panel concludes that, while seniority should be given weight, management must be left to determine for itself the appropriate weight to be assigned to merit, ability and seniority in laying off, demoting, or transferring supervisory employees.

The desire of the foremen for seniority provisions apparently springs in part from a belief that seniority is given little if any weight in making lay offs or demotions

as exemplified in certain instances when men of long service were discharged or demoted. The lack of convenient and prompt methods by which such cases of alleged unfairness could be heard has, it appears, increased the desire for rigid seniority rules. In Section XXX of this report the Panel recommends grievance procedure which should assure a prompt hearing to any foreman who believes that he has been unfairly demoted, laid off, or transferred.

XXVIII. **Seniority in Promotions.**

In some cases the foremen demand that greater weight be given to seniority by employers in making promotions. The conditions of employment asked by the Leadingmen's Organizing Committee in the Federal Shipbuilding and Drydock case include that promotions among the leading men be governed by straight seniority. In the hearing before the Panel counsel for the union proposed that the section read: (New York Rec. Aug. 8, 1944, 219-221)

> "Seniority shall govern whenever it becomes necessary to reduce the number of supervisors. Seniority shall also govern with regard to promotions."

The reasons which led the Panel to recommend that each management be left free to assess for itself the relative weight to be accorded to seniority, merit, and ability in the case of layoffs, demotions, or transfers apply even more forcibly in the case of promotions. Higher management frequently needs young, aggressive, and energetic men. Furthermore, able foremen and assistant foremen of only a few years experience but of exceptional promise are entitled to reasonable opportunities to demonstrate their capacities and to rise to greater responsibilities. The attachment of excessive weight to seniority in promotions would go far to reduce the drive to excel among the foremen and would limit the opportunity of young men to forge ahead. Its effect upon the quality of management and upon the enterprise and efficiency of American industry would be unfortunate, if not disastrous. The effect on the rank and file would also be undesirable. The Panel

concludes that the Board should refrain from imposing seniority rules upon management governing promotions among supervisors.

XXIX. The Need for More Adequate Arrangements for Communication Between Supervisors and Higher Management.

The record in these cases, and particularly in those of the ten manufacturing companies, is replete with evidence of misunderstandings between supervisory employees and higher management.

On the whole management has made some attempt to instruct and explain the duties of foremen, but in the rush of war production these efforts have been notably inadequate in some cases. A number of witnesses clearly knew neither the the limits of their authority nor of their duties as foremen. In some cases the foremen were slow to be advised of actions and policies of management, and it appears that the reasons for such actions and policies frequently are not given. In Republic Steel, for example, the assignment of a new man to training without explanation and his subsequent appointment as a foreman precipitated a walkout.

But if the authority and duties of foremen sometimes receive insufficient explanation to make them understood, the rights and privileges of foremen are even less well explained. Few companies made any point of describing to the Panel, except on questioning, the extent to which they explain to foremen their rights and privileges as representatives of management. Witnesses for the foremen in their testimony exhibited lack of information concerning their rights and privileges. They were repeatedly in error and had to be corrected by the testimony of the companies.

The channels of communication on which higher management relies for keeping informed of attitudes among the foremen are of three general types: (a) the "open door" of higher executives to which the foremen are presumably to find their way if they have grievances which

cannot be settled satisfactorily by intermediaries; (b) the line executives from the immediate superiors over foremen up to top executives; and (c) the "grapevine" which may refer either to the channel of line executives, just cited, or to miscellaneous informal and fortuitous routes by which rumor and fact come to the attention of top management. The inadequacy of these channels is well exhibited by the record in these cases. The Panel is forced to conclude that if the immediate superiors of foremen know their attitudes and smouldering dissatisfactions, the knowledge is too rarely put to use in formulating remedial measures. The vice-president in charge of industrial relations for the Baldwin Locomotive Works frankly admitted that he did not know the supervisors had all these grievances (Detroit Rec. 319).

The "open door" is used only by a relatively few individuals who, because of the extreme seriousness of their grievances or because of their persistence, take their cases to the top. Several witnesses regarded it as futile or improper to appeal over the head of one's superior. There appears to be a belief among some foremen that their grievances are not considered on their merits either by immediate superiors, who may have to say "No," or by higher management.

The testimony of witnesses raises doubts as to whether the regular channels of communication through line executives are effective, unless the steps between foremen and top management are few in number and unless top management deliberately seeks to learn the attitudes and opinions of foremen by instructing subordinates to report. While the immediate superiors may acquire a considerable knowledge of the foremen's attitudes and dissatisfactions, they may or may not try to rectify the sources of grievances, and they can do little about those complaints based on policy determined higher up. There is evidence to show that higher management in some cases takes little serious interest until a "problem" develops which requires attention.

While the "grapevine" may be a useful channel of com-

munication, it is obviously too informal and unreliable to be depended upon in developing satisfactory relations with foremen. Moreover, as arms of management, these foremen expect a more dignified participation in management and more direct routes to those in authority than this informal method of communication provides. The Panel detects in the testimony from the foremen a feeling that if they are arms of management, there should be a more intimate relationship with higher management. The relationship they have in mind is apparently one in which they would at least be heard, if they have no greater participation in determining the terms and conditions of employment. It appears that they also desire to be consulted about policies which they as foremen must execute.

The Panel believes that management has been over-confident of the efficacy of its one-way communication to foremen and that it needs to develop better and more formal systems of communication from foremen to higher management, leading directly to someone with authority to initiate and carry through remedial measures when needed. Several companies, on questioning from the Panel, conceded that disaffected customers would prompt them to make special studies of the reasons in the hope of restoring customer relations; but they evinced little disposition to rely on other than established channels of information and procedures in remedying the causes of disaffected foremen. (Detroit Rec. 2298-2299, 3000-3002, 3690-3693, 3874-3880) The Panel believes that until better procedures are developed, harmonious relations will be difficult to maintain. It recommends that the companies develop more effective systems of two-way communciation between supervision and higher levels of management. It believes that the best interests of supervisors and of higher management will be served by developing more intimate relations between the two rather than by widening the breach.

XXX. Grievance Procedure.

The foremen in every case before the Panel, except the New York Shipbuilding Company case, have asked that the Panel recommend the establishment of grievance ma-

chinery. The New York Shipbuilding Company has been meeting with a committee of its sub-foremen to discuss grievances. In that case the sub-foremen ask that final appeal to a neutral be provided for.

The Panel elsewhere in this report has called attention to the fact that at the present time the foremen seem to have relatively few well-supported complaints. The Panel is convinced, however, that important grievances formerly did exist and that they have in large part been rectified. The Panel also believes that the reductions in the supervisory staffs, which are inevitable as war production is curtailed, are bound to give rise to many grievances. The prospect of these reductions with no more than present methods for handling them is a source of current dissatisfaction. Finally, the Panel points out that absence of satisfactory opportunities to dispose of minor, smoldering grievances may itself be the cause of serious discontent.

Most of the companies follow a practice of adjusting foremen's grievances on an individual basis. The foreman must present his own grievance either to his immediate superior or to higher officials if he so desires.

Several companies recognize the need for broader arrangements for handling the grievances of foremen. The Murray Corporation of America seeks to meet the problem through a supervisory personnel officer in the personnel department. The Baldwin Locomotive Works, The Gar Wood Industries, Inc., The Hudson Motor Car Company, The Maryland Drydock Company, and the New York Shipbuilding Corporation, as noted in Section VII of this report, either meet with committees of supervisors to discuss grievances or have indicated a willingness to do so.

The Panel considers procedures for settling grievances individually through ordinary channels of authority to be inadequate. The insistence by management that its representatives will deal with each foreman only individually and then only about his own grievances impedes, if it does not preclude, the initiation of grievance cases affecting groups of foremen. But even in his own behalf a single foreman may be at a disadvantage in presenting his case.

Board's Exhibit No. 19

Being one among many, the foreman is individually dispensable and replaceable. He is too far down the management ladder to influence policy or to argue effectively against superiors. He is at a disadvantage in questioning the decisions, rules, and policies of his superiors. Too often, he is in the position of requesting a superior to reverse a decision which the superior himself has made and which the superior may be reluctant to change. Alternatively the foreman may be in the position of requesting his superior to press his case for changes in the decisions, rules, or policies determined higher up in management. Such a superior would naturally be hesitant in pressing the case of a subordinate before reluctant higher officials, especially if doing so were to imperil his own position. If the foreman appeals his own case over the head of his immediate superior, he runs the risk of jeopardizing his relations with the man under whom he must work. The numerous steps through which the individual must appeal a grievance for final adjudication are in some cases sufficient to exhaust the perseverance of the foreman and to compromise his standing in the company.

The Panel considers that the recently adopted arrangements whereby certain companies will discuss personal grievances under given conditions with groups of foremen eliminate some of the shortcomings of traditional procedures and are important steps in the right direction. The Panel believes, however, these arrangements fall short of meeting the need. They do not, for example, give foremen or committees of foremen a good opportunity to question general policies of management.

The contentions of the employers that the creation of formal grievance procedure will amount to the establishment of collective bargaining are, in the opinion of the Panel, unfounded. Merely hearing a group of foremen is not collective bargaining. The end result of collective bargaining is an agreement—a bilateral arrangement to which both management and employees are parties and which may be changed only by mutual consent. The end result of the presentation of a complaint is an affirmance

or modification by management of a practice or a decision. Management makes no agreement. It simply decides unilaterally after a full hearing what it will do. The process of hearing, investigating, and settling real or imagined grievances of foremen is not bargaining unless management elects to make it such.

The Panel recommends that each of the employers in these proceedings, except the New York Shipbuilding Company, be directed to submit to the National War Labor Board a proposal for grievance machinery for foremen which will embody at the least the following:

1. Any foreman or group of foremen unable to adjust with a superior either an individual or a common grievance shall have the right to be heard by one or more representatives of higher management who, in ordinary cases, shall have authority to give a final decision.
2. The aggrieved foreman or group of foremen may present his (or their) own case or he (or they) may be represented by one or more persons (not to exceed three) selected by the aggrieved individual or group. If a group of foremen elects to present its own grievance during working hours, it shall act through a committee not exceeding three.
3. A regularly designated time shall be set aside to hear the grievances of foremen.
4. Decision shall be reached within a reasonable time—ordinarily within a week.
5. Minutes of the meetings shall be kept.
6. Decisions of the appeal official or officials shall be promptly communicated to the complainant in writing.

This recommendation does not apply to the New York Shipbuilding case, as the supervisors in that case raise no objection to the existing grievance machinery, except that it fails to provide for ultimate appeal of deadlocked cases to a neutral.

Board's Exhibit No. 19

XXXI. The Demand of the Foremen That Grievance Machinery Terminate in an Appeal to a Neutral.

The Panel does not recommend that the Board approve the foremen's request that grievance procedure terminate in an appeal to a referee or arbitrator. The managements of specific companies may from time to time be disposed, and even glad, to submit their judgments in cases involving foremen to review by a neutral. The conclusion of the Panel that the Government should not order arbitration in the case of foremen is not to be interpreted as a conviction by the Panel that the Government should refrain from ordering arbitration in cases involving the rank and file or in other fields. The conclusion is based on considerations which apply with special force to supervision.

The adjustment of differences between foremen and higher management ordinarily involves considerations not present in the settlement of disputes between rank and file employees and the company. Higher management is held accountable both for the performance of foremen and for the performance of rank and file employees under the supervision of foremen; but there are notable differences. The results for which the rank and file employee is responsible are limited and usually the product of his skill with materials, tools and equipment; whereas the results for which the foreman is responsible are greater in scope and more the product of his knowledge, ability to direct others, and to work harmoniously with others. While higher management must see to it that the rank and file workers perform their duties effectively, it must do this largely by relying on intermediaries in whom it can repose implicit trust, to whom it can delegate responsibilities, and on whom it can depend for seeing that the rank and file carry out company policies. Foremen are hired to perform these intermediate functions. They are selected for their ability to exercise types of skills which are difficult to appraise and which must fit the particular position to which the foreman is assigned. Foremen are strategically placed between the rank and file and higher management and over the operations of whole departments. Because of the key

position they hold in the organization, and because higher management is so dependent upon them for the execution of company plans and policies, higher management must exercise greater discretion and care in the selection, advancement, retention in service, and discipline of foremen than in the selection, advancement, retention, or discipline of rank and file employees.

If in appealing a grievance of a rank and file employee to an arbitrator, the judgment of the management is overruled, the harm that results is ordinarily quite limited. Even restoring a discharged employee to his position normally would not affect the total output or efficiency of the plant by more than a small degree. If a number of employees are involved, the adverse consequences would rarely be disastrous to the morale or output of the rank and file.

If, on the other hand, an arbitrator overrules the judgment of management regarding a foreman's grievance much more serious difficulties and adverse effects could easily result. By substituting the discretion of an outsider for that of management and by compelling the company officials to rely upon subordinates in whom they do not have confidence, or whose methods they do not approve, the essential relationship of trust would be destroyed. Moreover, an inept or inefficient foreman may seriously affect the over-all operations not only of his department, but often of the whole plan. For such reasons the Panel has concluded that higher management should not be required against its will to pass over to outsiders questions of disciplining foremen, or of the selection, advancement, retention, or transfer of foremen. The Panel also calls attention to the fact that a principal duty of higher officials in an enterprise is to exercise discretion and judgment and in matters of human relations among others. The quality of their judgment has usually had much to do with their selection for posts of responsibility and authority. The success of the enterprise depends heavily on the wisdom and decisions of higher management. When cases involve such intangibles and questions of personal

judgment as the relative competence of several foremen, their relative suitability for a given position or for unlike positions in an organization, their relative promise of growth, their potentialities for higher positions, their reliability in emergencies, there is no good reason to require that the judgment of a more or less inadequately informed outsider, who may or may not be skilled in administration, be substituted for the judgment of a manager who knows the foremen through more or less extended contact and who will be held accountable for the results which the foremen produce. The rectification of injustices to individual foremen is important, and this is a responsibility in which top management should take an active interest; but it is a responsibility which can be best exercised as a normal managerial function through grievance procedures established for the purpose, rather than by compulsory appeal to outside neutrals.

Finally the Panel directs attention to the fact that the unions of the printing trades, which for many years have required foremen to belong, do not question the full freedom of any employer to discharge a foreman for any reason or for no reason, and do not even provide a procedure by which foremen may challenge the decisions of higher management.

XXXII. The Need for Clear Statements of the Supervisors' Working Conditions and of Company Policies Affecting Supervisors.

Some of the companies involved in these proceedings have endeavored through foreman's manuals or statements of company labor policy to provide supervisors with clear and comprehensive statements concerning their rights, privileges and duties, and their relations with other parts of management. The record in these proceedings, however, shows that in some companies there is considerable uncertainty and even ignorance among foremen concerning company policies and concerning the rights and privileges of foremen. The foremen compare uncertainty of their position unfavorably with the definite terms of the trade

agreements applicable to the rank and file workers. The Panel recommends that each company in these proceedings which has not already done so provide supervisors with a clear statement of company policy concerning the compensation of supervisors, overtime, shift differentials, promotions, lay-offs, transfers, demotions, vacations, sick leave, and other matters of concern to supervisors.

XXXIII. The Relation of the Foremen Organizations in These Proceedings to Other Labor Organizations.

In three cases before the Panel, the organizations of supervisors are affiliated with the unions of rank and file workers whom the foremen supervise. In one case the supervisors belong to an A. F. of L. union, but the men they supervise belong to a C. I. O. union. Although the A. F. of L. union is limited to supervisors in the plant involved in these proceedings, in other plants it is mainly composed of rank and file workers. In the other nine cases before the Panel there is no connection between rank and file unions and the organizations of supervisors. The Foreman's Association of America has asserted its determination to remain independent of rank and file organizations. The Panel regards this intention of the Foremen's Association as important because the Panel does not believe that it is appropriate for supervisors, who are responsible for discipline, assignment of work, rate adjustments and promotions, who represent the employers in handling the grievances of rank and file workers, and who generally represent higher management in dealing with the rank and file workers, to be subject to discipline by a union which is controlled directly or indirectly by the men whom they supervise. The effectiveness of management requires that it have its own uncontrolled agents to represent it in dealing with the rank and file, just as the rank and file are entitled to have their own uncontrolled representatives for dealing with higher management.

The efforts of independent organizations of foremen to retain their independence of rank and file organizations may or may not succeed. The rank and file may insist

upon absorbing or controlling organizations of foremen in order to protect themselves against loss of employment through strikes of foremen or in order to increase the bargaining power of the rank and file unions. A union of rank and file employees could threaten the independence of a foremen's organization by offering to take the jobs of striking foremen. The outcome would depend in part upon the policy followed by employers. The Panel calls attention to recent developments in the coal industry. The United Mine Workers recently amended its constitution to admit supervisors. The by-laws of the affiliate of supervisors in the bituminous coal industry—not yet drawn—are by the constitution of the mine workers union subject to change or suspension by the Executive Board or the United Mine Workers.

XXXIV. The Basic Demand of the Foremen in These Disputes.

The representatives of the supervisors in all of these cases have been frank in saying that their ultimate objective is in winning bargaining rights and the recognition of their respective organizations as bargaining agents. The terms of reference under which the Panel operates exclude issues of bargaining rights and recognition. Consequently the Panel has refrained from considering these issues. Although the supervisors in these cases have all made plain their desire for bargaining rights, their interest in bargaining rights does not appear in the main to spring from complaints concerning their compensation or working conditions. On the contrary, it appears to spring from two principal causes: (1) the desire of foremen to retain their jobs, which they know to be unusually good ones, and to escape demotions when cutbacks come; and (2) the desire of the foremen for freer interchange of viewpoints with higher management, particularly better opportunities to present such grievances as may arise.

(Printer's Note: A page of the this exhibit is missing at this point, being page 170 of the original exhibit.)

Board's Exhibit No. 19

APPENDIX I.

Seniority provisions in rank and file contracts which apply to foremen:

Baldwin Locomotive Works

Agreement between the Baldwin Locomotive Works, Eddystone, Pennsylvania, and the United Steel Workers of America (on behalf of Locals Nos. 1278, 2180, and 2443), dated June 1, 1943.

Section 1. The word "employee" is defined to apply to only "hourly rated" employees. The Panel does not presume to offer an authoritative interpretation of the application to foremen of the seniority provision of the agreement between the Baldwin Locomotive Works and the United Steelworkers. Apparently foremen who had seniority standing as a rank and file employee on June 1, 1942, would continue to accumulate seniority as foremen unless his right to seniority was broken for one of the reasons specified in the agreement.

Section 7. It is mutually agreed between the Company and the Union that present seniority lists compiled as of June 1, 1942 for the Southwark Division, and as of June 1, 1942 for the Locomotive and Foundries Divisions shall remain in effect and that all employees included on these lists shall retain such accumulated seniority up to and including the above respective dates as of which they were compiled for each shop . . . in each Division, an employee of continuous service in any shop of the Division shall be broken so that no prior period or periods of employment shall be counted and his right to seniority in such Division shall cease upon:

a. justifiable discharge;

b. voluntary quitting;

c. leave of absence for a period of more than six (6) months;

d. failure of an employee to return to work upon re-

call within five (5) days after written notice is sent to him by the Company at his last known address appearing on its records (a copy of which shall be furnished the Secretary of the Local Union in the shop of the Division in which such employee was employed), unless excused by the Company by reason of illness or other reasonable cause; and

e. absence due either to lay-off, disability or any other reason which continues for more than two (2) years, except that absence due entirely to compensable injury received in the course of an employee's employment by the Company shall not, to the extent of the period for which statutory compensation is payable, be included in the computation of said two year period.

When an employee whose continuous service has been broken by any of the above causes is again hired, he shall begin as a new employee in the shop of the Division in which he is rehired and his seniority therein shall be calculated from the date of such rehiring.

Briggs Manufacturing Company

Agreement between Briggs Manufacturing Company and Local 742, United Automobile Workers, dated December 30, 1943.

Article 4, Section 1. Seniority shall be accumulating from the first date of employment, subject to the conditions set forth in Section 8 of this Article.

Section 4. Employees transferred to a different code will immediately carry their full seniority on the new occupation.

Section 7. (a) Employees who are classified by the Management as indispensable for starting or maintaining a proper flow of production or for preparing tools, plant or equipment, or for similar reasons, will be retained or recalled without date of demotion.

(b) Foremen demoted because of lack of work will

not be retained on the indispensable list for more than one year from date of demotion.

Section 8. Seniority rights shall be forfeited if an employee is absent over eighteen (18) months, quits of his own accord, or is discharged or refuses to return to work when called. Notice of the call to return to work shall be by mail, telegram or newspaper advertisement. If, however, circumstances make it impossible for an employee to immediately return to work, he may ask the Employment Office for a leave of absence, subject to leave of absence rules, which will keep his seniority intact. Employees who have previously worked for the Company will be hired before new employees are hired.

Chrysler Corporation

Agreement between Chrysler Corporation and United Automobile Workers, dated September 10, 1943.

Section 27. If an hourly rated employee is promoted to assistant foreman, foreman or to any other supervisory position, and is thereafter transferred to an hourly rated employee, he shall accumulate seniority while working in the supervisory position and when so transferred shall commence work as an hourly-rated employee with the seniority ranking he had at the time of his promotion, plus the seniority accumulated when he was working in the supervisory position.

Gar Wood Industries

Contract with Local No. 250, United Automobile Workers.

Article III. Section 1.

. . . "When an employee is transferred to an upper classification, said employee's seniority shall be as of date of transfer; said employee shall have accumulated seniority in the lower classification."

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Hudson Motor Car Company

Agreement between Hudson Motor Car Company and United Automobile Workers Union, dated December 10, 1943.

Article V. (i) "Seniority shall for forfeited if an employee quits of his own accord, if discharged, or fails or refuses to return to work when called." . . . "Seniority shall be forfeited if an employee is absent three (3) consecutive working days without notice unless satisfactory explanation is given." . . .

(n) The fact of having been a Foreman or Assistant Foreman does not establish priority seniority over other employees. **All salaried employees without previous hourly rate record will start on hourly rate classifications without seniority.**

Maryland Drydock Company

Agreement between Maryland Drydock and Local 31 of Industrial Union of Marine and Shipbuilding Workers of America, dated June 24, 1943.

VI. (b) Service record lists, prepared in accordance with the agreement of February 21, 1939, shall be maintained and shall be posted in all departments. (1939 agreement not available.)

(d) Employees shall lose all seniority rights if:

1. they terminate their service voluntarily.
2. they are discharged for proper and sufficient reason.
3. they do not report for work when notified unless within three (3) days they present a reasonable excuse. (The reasonableness of the excuse shall be determined in the first instance by the Personnel Manager, but any employee shall have the right to protest loss of seniority through the prescribed grievance procedure.)
4. they do not work for the Company for two (2) consecutive months, unless leave of absence is granted, or unless absence is due to illness or

injury, in which case fifteen (15) months' absence shall be necessary to cause loss of seniority, provided that when Congress determines that the state of war presently existing no longer exists, the period for loss of seniority (other than for illness or injury) shall automatically be increased from two (2) to four (4) months.

(e) An employee on a service record list in one classification, when permanently transferred, either at the Company's or the employee's request, or when promoted to another classification, shall carry one-half of his seniority from his old classification to his new classification; provided that his seniority in the new classification shall be less than employees of four (4) years' seniority.

The Murray Corporation

Article VIII, Section 2:

All Star Badge Employees outrank all other employees. Foremen reduced to workers during reductions in force shall retain their seniority status as Star Badge Employees in their Departments for a period of three (3) months. Employees promoted to Star Badge Employees shall not attain full seniority rights of Star Badge Employees for the first three (3) months.

New York Shipbuilding Corporation

Agreement between the New York Shipbuilding Corporation and Industrial Union of Marine and Shipbuilding Workers of America, Local No. 1, dated June 23, 1943.

Article 8. (1) The seniority standing of all employees who have worked for the Corporation at any time since August 29, 1935, shall be determined by total length of service with the Corporation at any time calculated as hereinafter provided, and by their skill and ability. Whenever skill and ability are

fairly equal, length of service shall be the determining factor, . . .

(2) Length of service of a skilled man in any craft or classification within such craft in a department in which he has worked, shall be calculated in years and months of time worked by him as a semi-skilled or skilled man. . . .

(3) Length of service of a semi-skilled man in any craft or classification within such craft in a department in which he has worked shall be calculated in years and months of time worked by him as a semi-skilled man in that craft in that department.

(4) Length of service of an unskilled man in each craft or department in which he has worked, shall be calculated in years and months of time worked by him as an unskilled man in that craft or department.

(5) An employee who, on and after October 3, 1938, has been discharged, or has quit when needed, or who, due to lay-off for lack of work has been absent from the Corporation's employment for a period exceeding two years shall lost his seniority standing; when re-employed his length of service shall be calculated from the date of his reemployment.

Packard Motor Car Company

Agreement between Packard Motor Car Company and United Automobile Workers, dated October 7, 1942.

Article III, Section 5. Employees' seniority shall be computed from the original date of hiring and will be lost only for the following reasons:

a. When discharged from cause.

b. Voluntary resignation.

c. When failing to return to work when notified by registered mail or telegram within five (5) days from date of call.

d. Employees who are absent from work for more than three (3) days without proper notification to the Company.

e. Employees who have been laid off more than twelve (12) months.

Section 21. Foremen or assistant foremen who are demoted and placed on an hourly basis shall resume their seniority with the Company on the same basis as any other employee, providing they formerly worked on that occupation and were promoted to foremanship at the Packard Motor Car Company.

Employes who have been advanced to supervision and who are found unsatisfactory as such will be returned to production.

Republic Steel Corporation

Agreement between the Republic Steel Corporation and the United Steelworkers of America, dated August 11, 1942.

Section 8. Class A.

1. Each present Employee shall, as of the date of this Agreement, have such continuous service record as is shown on the employment records of the Company for such Employer, and he shall accumulate additional continuous service until his continuous service record shall be broken, in which event, his continuous service record shall end and be cancelled. . . .

3. The continuous service record of any Employee shall be broken by:

a. Voluntarily quitting the service;

b. Discharge from the service;

c. Absence due to termination or suspension, either of which continues for more than six months, or

d. Absence due either to layoff or to disability, or both, which continues for more than two years, provided however, that the continuous service record of any Employee injured while on duty shall not be broken during the period for which he is unemployed and for which workmen's compensation is payable to him.

RESPONDENT'S EXHIBIT NO. 1.

United States of America
Before the National Labor Relations Board
Seventh Region

In the Matter of

PACKARD MOTOR CAR COMPANY

and

FOREMAN'S ASSOCIATION OF AMERICA

Case No. 7-C-1452

Motion to Dismiss Complaint.

Now comes the Packard Motor Car Company, a Michigan corporation, the respondent in the above entitled proceeding, and moves that the Complaint filed in said proceeding be dismissed for the following reasons:

1. Because the general foremen, foremen, assistant foremen and special assignment men of the Packard Motor Car Company are not employees under the provisions of the National Labor Relations Act.

2. Because the general foremen, foremen, assistant foremen and general assignment men of the Packard Motor Car Company do not constitute a unit appropriate for the purposes of collective bargaining under the provisions of the National Labor Relations Act.

3. Because the National Labor Relations Board has no jurisdiction, power or authority to file a Complaint in this proceeding and has no jurisdiction over the subject matter set forth in said Complaint.

4. Because the exercise of jurisdiction of the National Labor Relations Board in this proceeding and the issuance of any order or directive directing or requiring the Packard Motor Car Company to collectively bargain with its general foremen, foremen, as-

sistant foremen or special assignment men would constitute an illegal, unwarranted, arbitrary and unreasonable interference with the rights of the Packard Motor Car Company and would be in violation of the Constitution of the United States and particularly of the Fifth Amendment thereof.

5. Because any order or direction issued by the National Labor Relations Board in the present proceedings directing, ordering or requiring Packard Motor Car Company to collectively bargain with any representative of the general foremen, foremen, assistant foremen or special assignment men of Packard Motor Car Company would be beyond the limits of the discretion vested in the Board, and an abuse of that discretion, and would be contrary to the provisions of the National Labor Relations Act and detrimental to public interest and to the free flow of commerce.

6. Because the National Labor Relations Board had no jurisdiction, power or right to institute or permit to be instituted or to take jurisdiction over the proceedings in the case entitled "In the Matter of Packard Motor Car Company and Foreman's Association of America, Case No. 7-R-1884" the proceeding out of which and in connectio with which and based upon which the present Complaint is filed, or to issue any orders, decisions, directions or certificates in that proceeding.

7. Because the findings, certificates, decisions and directions issued by the National Labor Relations Board in the cause entitled "In the Matter of Packard Motor Car Company and Foreman's Association of America, Case No. 7-R-1884" are illegal, unconstitutional, null and void and of no force and effect and afford no basis for the filing of the Complaint in this proceeding.

8. Because the findings, certificates, decisions and directions issued by the National Labor Relations Board in the case entitled "In the Matter of Packard

Motor Car Company and Foreman's Association of America, Case No. 7-R-1884" are contrary to the evidence submitted in that proceeding, are beyond the limits of the discretion vested in the Board, are an abuse of discretion, and are contrary to the provisions of the National Labor Relations Act and detrimental to public interest and the free flow of commerce.

This motion is based on the records and files in this proceeding and the records and files and the briefs submitted in the National Labor Relations Board proceeding entitled "In the Matter of Packard Motor Car Company and Foreman's Association of America, Case No. 7-R-1884" and the Constitution of the United States and the laws of the United States.

PACKARD MOTOR CAR COMPANY

By BODMAN, LONGLEY, BOGLE, MIDDLETON & ARMSTRONG (LOUIS F. DAHLING)
Its Attorneys
Address: 1400 Buhl Building
Detroit 26, Michigan

RESPONDENT'S EXHIBIT NO. 2.

(copy)

CONGRESS OF INDUSTRIAL ORGANIZATIONS
Regional Office—Cleveland
Area
314 Public Square Building
Cleveland 13, Ohio

May 7, 1945

Subject: CIO Opens Membership to Foremen and Supervisors

From: Sam Sponseller, CIO Regional Director—Cleveland

After a long hard fight with the National Labor Relations Board in which the CIO and other interested parties and groups participated, the Board has recently conceded that foremen and other supervisory employees have the right to organize into Unions of their own choosing, for the purpose of collective bargaining, with the full protection of the National Labor Relations Act and the National Labor Relations Board in the exercise of these rights.

Accordingly, the CIO has now opened its membership in CIO Local Industrial Unions to all foremen and supervisory employees, excluding superintendents, etc.

Local Industrial Union Charters are issued directly from the National CIO Headquarters in Washington, D. C., to groups desiring affiliation, until such time as there is sufficient organization in that particular field to bring these local Industrial Unions into one of the affiliated national or international unions, or, establish a national or international union for that field.

The initiation fee is $2.00 and the monthly dues $1.00 payable with the signed application. In case the applicant now holds membership in a CIO affiliated union, his paid-up card, or receipt, and $1.00 is all that is required.

Respondent's Exhibit No. 2

By this direct affiliation with the National CIO, these Local Industrial Unions enjoy the aid and assistance of the National CIO, the CIO Regional and CIO Field Staff, who service them. In addition to this they have the active support and cooperation of all the CIO affiliated national and international unions.

Every foreman and supervisor in American Industry should be fully aware of the tremendous gains made, and benefits enjoyed, by the non-supervisory employees through their membership in the CIO. It is not too much to say that membership in the CIO can be expected to bring great benefits and security to the foremen and supervisory employees.

In opening the door of membership to foremen and supervisors, the CIO pledges its whole resources and all its ability to the improvement of their wages, hours and other working conditions, the just settlement of their grievances and the establishment of real security on their jobs.

For further information contact the CIO Regional Office at the above address.

Here are the two policies adopted by the union's executive board:

"1—With respect to supervisory personnel who have the right to hire and fire, it should be clear that such employes are not eligible to membership in the United Steelworkers of America, and no effort shall be made by this union to organize them into membership.

"2—With regard to foremen, assistant foremen, gang leaders and others of this character, who are actually directly related in their work to the production and maintenance workers, the union shall endeavor to negotiate with the several employers for the purpose of arriving at a satisfactory agreement pursuant to which our existing agreements covering production and maintenance workers shall be extended to include such additional employes."

The foremen's resolution was one of two adopted by the Executive Board here yesterday. The other approved a national wage policy, announced in Washington previously, to seek a basic wage increase of at least 20 per cent.

President Philip Murray of the Steelworkers was instructed to present the demand to President Truman and other Government officials.

RESPONDENT'S EXHIBIT NO. 3.

(copy)

(From Pittsburgh Press of May 27, 1945.)

Steelworkers to Organize Foremen.

Old Policy Dropped; Drive Planned.

For many years the **CIO United Steelworkers of America followed** a "hands off" policy on foremen, gang leaders and other straw bosses.

Today that policy has been dropped.

The union plans an organizing campaign among all bosses who do not have "hire and fire" authority.

Thousands Affected.

This will affect many thousands of workers. In modern industry many foremen no longer have the absolute power which was once theirs. It has been transferred to personnel and labor relations departments.

Respondent's Exhibit No. 3

The move of the Steelworkers follows intense activity among foremen in many industries. Particularly, it follows the National Labor Relations Board ruling of March 27 that employers are required to recognize and bargain with foremen's unions.

The union proposal does not refer to separate unions. It hopes to extend its contracts covering production workers to all foremen and others "whose jobs are directly related to production work."

But it is still an open question before the NLRB whether employers must bargain with unions for foremen who are in production workers' unions. Only where the foremen are in separate groups has bargaining been ordered thus far.

Union Statement.

Concerning that, the union says:

> "It must be recognized by management that the existence within a single plan of one union for production workers, and another union for the foremen and assistant foremen who are actually directly related, may well produce unnecessary conflict and turmoil."

The union asserts that its own constitution prevents inclusion of any persons with "hire and fire" authority. But it adds:

> "During the early organizational efforts . . . the union acceded to the urgent demand of the companies that certain groups of so-called foremen and assistant foremen be excluded . . ."

Decision Cited.

However, due to NLRB decisions, there has been "intensive activity developed among foremen in steel plants to organize into various unions . . ."

As a result, the Steelworkers are moving first before other organizations get a grip among steel supervisory workers.

RESPONDENT'S EXHIBIT NO. 4.

Excerpt from "The Searchlight", Official Publication of CIO-OAW, Chevrolet Local No. 69, Flint, Michigan, Issue of March 1, 1945.

"Foremen's Association Making Definite Progress at Chevrolet.

Weak Sisters Slow Tempo of Organizational Drive.

By Geo. Carroll.

About 300 Chevrolet Foremen have received credentials as members of the Foremen's Association of America to date.

However, in a talk with Mr. Kelley, contact man of the association about a week ago, he stressed the fact that while this is a creditable showing the most difficult phase of organization has apparently been reached.

In other words, the bottom of the barrel has been reached insofar as mere salesmanship is concerned and from now on pressure will be required to convince the more timid foremen that they will need protection in post war days, as thousands of well trained young technicians are demobilized.

I have heard Otto Ramlow talk to some of his foremen as if they were slaves and I wondered if it wouldn't be worth a couple of dollars a month to them to be able to tell that old buzzard to go to h——.

Of course Ramlow is in a class by himself so it may be unfair to cite him as an example, but nevertheless, there are other superintendents who also overstep the bounds of decency in dealing with foremen under their supervision.

I am certain of one thing however, after the war, when the corporation will be in a frenzy to build cars, this plant

is one which no doubt will have strike after strike before G. M. comes to its senses and any foreman who does not hold a card in the association will be given little consideration by union men.'

If they receive rough treatment they will have no one to blame but themselves.

Better think it over, any of you foremen who still nourish scabby ideas.

"In other words, 'You better get in, before we begin.'"

In the

UNITED STATES CIRCUIT COURT OF APPEALS
For the Sixth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
v.
PACKARD MOTOR CAR COMPANY,
Respondent.
No. 10,157

STIPULATION.

It is stipulated by and among counsel for the National Labor Relations Board, petitioner, and Packard Motor Car Company, respondent, that Company Exhibits No. 21, 46, and 47-b, referred to in the counter designation heretofore filed with the Court in this case, shall not be reproduced in the printed record but may be referred to by the Court and by the parties in their original form as "Physical Paper Exhibits."

Dated at Washington, D. C.
this 14th day of January, 1946.

LOUIS F. DAHLING,
Attorney for Respondent.

A. NORMAN SOMERS,
Assistant General Counsel,
National Labor Relations Board.

In the

UNITED STATES CIRCUIT COURT OF APPEALS

For the Sixth Circuit

NATIONAL LABOR RELATIONS BOARD, Petitioner, v. PACKARD MOTOR CAR COMPANY, Respondent.	No. 10,157

STIPULATION

(filed Feb. 12, 1946).

It is stipulated by and among counsel for the National Labor Relations Board, petitioner, and Packard Motor Car Company, respondent, that Board Exhibit No. 19 in the case of Packard Motor Car Company and Foreman's Association of America, No. 7-C-1452, be considered as having been set forth in the Counterdesignation filed by the Packard Motor Car Company and be printed and made part of the record in the above proceeding.

Dated at Detroit, Michigan,
this 4th day of February, 1946.

(signed) LOUIS F. DAHLING,
Attorney for Respondent.

(signed) A. NORMAN SOMERS,
Assistant General Counsel,
National Labor Relations Board.

Approved:

(signed) XEN HICKS,
Circuit Judge.

PROCEEDINGS IN THE

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

CAUSE ARGUED AND SUBMITTED

(June 1, 1946—Before: SIMONS, ALLEN and MILLER, JJ.)

The motion of Carnegie-Illinois Steel Corporation to intervene and to participate in oral argument, and the motion of Chrysler Corporation to file brief as amicus curiae being formally presented to the court, upon consideration thereof the court orally grants said motions; and this cause is argued by Ruth Weyand for the Labor Board; by Walter M. Nelson for Foreman's Association of America; by Paul R. Conaghan for Carnegie-Illinois Steel Corporation; and by Louis F. Dahling for Packard Motor Car Company, and is submitted to the Court.

JUDGMENT

(Entered and Filed August 12, 1946)

On petition to enforce order of the National Labor Relations Board,

This cause came on to be heard on the transcript of the record from the National Labor Relations Board, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered, adjudged and decreed by this Court that the order of the National Labor Relations Board be and the same is hereby enforced.

OPINION

(Filed August 12, 1946)

Before SIMONS, ALLEN and MILLER, Circuit Judges.

ALLEN, Circuit Judge. This is a petition by the National Labor Relations Board to enforce an order issued in a proceeding charging unfair labor practices against the respondent, the Packard Motor Car Company. On December 6, 1945, the Board determined that Packard's "general foremen, foremen, assistant foremen and special assignment men" employed at the company's plants in Detroit, Michigan, constitute a unit appropriate for the purposes of collective bargaining within the meaning of section 9 (b) of the National Labor Relations Act. Pursuant to this order an election was held in which a majority voted that they wished to be represented by the Foreman's Association of America, one of the intervenors here. Packard refused to negotiate with the Foreman's Association, upon the ground that foremen are not employees under the Act, and are therefore not entitled to its privileges. At the hearing of the unfair labor case the Board decided that foremen, while they represent the employer for certain purposes, are employees in their relationship to the company and are entitled to the right of collective bargaining within the terms of the statute. It further found that the unit theretofore designated, including the four levels of supervisory employees—general foremen, foremen, assistant foremen and special assignment men—was an appropriate unit. The usual cease and desist order was issued, and it is this order which the Board asks this court to enforce.

Packard concededly is engaged in commerce. If the National Labor Relations Act applies to foremen and the unit is appropriate, refusal to comply with the order of the Board is admitted, and the order must be upheld.

Packard conducts its principal manufacturing operations in two main plants, broken down into approximately 20 divisions, which in turn are subdivided into approximately 300 departments. The total number of employees at the plants involved as of November 30, 1944, was 32,533. The general foremen number 125; the foremen

643, the assistant foremen 273, and the special assignment men 65. All classes of foremen have certain privileges not enjoyed by the rank and file worker. Their salaries are substantially larger than the wages received by the production force. General foremen, with overtime pay, receive approximately $500 a month; foremen approximately $450 with overtime; assistant foremen approximately $410 with overtime. The special assignment men are paid about the same as general foremen or foremen. These supervisory employees are paid for justifiable absences. They are given a more generous vacation with pay than other workers, and receive separation pay when they leave the company. They are paid for holidays, and permitted to report half an hour late for work without being deducted in pay.

The foremen are the front line of management. At Packard the general foreman is in charge of one or more departments, sometimes as high as four departments. In some departments there are no foremen, only assistant foremen, and in such cases the duties of the assistant foremen correspond to those of the foremen. When a general foreman has charge of several departments, he sometimes has an assistant foreman in charge of each department. In general, foreman and assistant foremen have charge of a division of the work of the entire department, or in certain instances they are the direct assistants under the general foreman in connection with the work of the whole department. The special assignment men are trouble shooters who move from division to division in the plant, but they have the qualifications of general foremen and foremen, and also their authority.

At Packard each foreman is responsible for the quantity and quality of production of the work in the area under his supervision. He must check the hourly production report and maintain production in his department. He must see that any breakdown is remedied, and that repairs are made. He has to instruct the foremen or assistant foremen under him and see to it that they properly execute their duties. None of the men in the

four classes involved here performs any manual work, each of them being principally responsible for the maintenance of quality and quantity of production in the area under his supervision. The general foreman makes recommendations to the superintendent as to the rates of pay, transfer, rehire, lay-off, discharge and discipline of the foremen. T recommendations are usually followed. The foremen and assistant foremen likewise make recommendations which are usually followed, concerning the pay, discharge, demotion, discipline, etc., of the workers under them. All classes of foremen make suggestions for the improvement of production, and these suggestions are very largely adopted. In an exhaustive report made by a panel of distinguished economists established by the National War Labor Board to deal with disputes in major automobile and shipping industries involving supervisors, including that between Packard and certain of its foremen, the panel recognized that for a long time the responsibilities and authority of the foreman had been undergoing a slow change, resulting in a drop in his authority and in his responsibility for making policies, and a rise in the foreman's responsibility for executing policies. However, the panel concluded:

> "These trends do not mean that the foreman's job is becoming less exacting or that it can be filled by less competent people. On the contrary, the need for able men in the posts of foremen seems to be growing. The foreman may be given more and more ready-made policies to execute, more and more standard practices to observe in executing them, and more and more help from a variety of service departments, but he is also held to higher and higher standards in meeting production schedules, in maintaining standards of quality, and in dealing with personnel. Furthermore, higher management cannot escape dependence upon the foreman's knowledge of men and conditions and upon the wisdom and fairness of the

foreman's judgment. On many matters the foreman may only recommend action, but his recommendations must usually be accepted by superiors who know too little about the circumstances of specific cases to reject the foreman's recommendation. Hence no matter how well conceived the company's production and labor policies may be at the top, they are in fact no better than they become at the hands of the foremen who execute them."

The demand of the foremen that they be allowed to organize in unions has been intensified as a result of the recent world war, and of the enormous expansion in industries such as Packard, not only in the number of production workers, but in the number of supervisory employees and foremen. In Packard there were from 250 to 280 foremen in the years 1938 to 1940. In June, 1944, there were 900 foremen. As a result of this increase, the panel found that the greatest fear of foremen today is that they will be laid off or demoted when cutbacks and cancellations of war orders occur, and stated that the interest of foremen in organizing is out of proportion to the nature and gravity of their grievances. As found by the panel, the interest of the supervisory employees in bargaining rights appears to spring from two principle causes: "(1) the desire of foremen to retain their jobs, which they know to be unusually good ones, and to escape demotions when cutbacks come; and (2) the desire of the foremen for freer interchange of viewpoints with higher management, particularly better opportunities to present such grievances as may arise."

The Board for a number of years held that foremen and supervisory employees generally do not constitute an appropriate unit for the purpose of collective bargaining, but in June, 1942, in *Matter of Union Collieries Coal Co.*, 41 N. L. R. B. 961, it held that a unit of assistant foremen, fire bosses, weigh bosses and coal inspectors was appropriate for the purposes of collective bargaining, and later, in *Matter of Godchaux Sugars, Inc.*, 44

N. L. R. B. 874, certified a local C. I. O. union as the bargaining agent of working and non-working foremen of the company. However, it excluded a general foreman. In *Matter of Stanley Company of America*, 45 N. L. R. B. 625, on November 17, 1942, it found that the unit of managers, assistant managers, utilitarians and treasurers in the Stanley Company's chain of theaters was not an appropriate unit, and at the same time dismissed a petition of an aircraft union which sought to represent a unit consisting of general foremen, foremen and assistant foremen of the Boeing Aircrafts Company, 45 N. L. R. B. 630. Shortly after the decision in the *Union Collieries* and *Godchaux Sugars* cases a bill was introduced in Congress making the National Labor Relations Act inapplicable to foremen. While this bill was being considered in committee, the Board on May 10, 1943, rendered a decision in *Matter of Maryland Dry Dock Co.*, 49 N. L. R. B. 733, in which, by a two to one vote, the decisions in the *Union Collieries* and *Godchaux Sugars* cases were specifically overruled. The decision stated that except in the printing and maritime trades where foremen traditionally have organized, the Board would not find units of foremen appropriate for the purpose of collective bargaining. The Board commented upon "the dangers inherent in the commingling of management and employee functions," and the "possible restrictive effect upon the organizational freedom of rank and file employees." It continued:

> "The very nature of a foreman's duties make him an instrumentality of management in dealing with labor. The duty of supervision with which he is principally charged implies a delegation of authority with respect to the selection, promotion and discharge of the workers in his section. Although the delegation of authority is no longer plenary in modern factories which have a central personnel system, there is no doubt that even the function of advising or recommending action with regard to personnel is

sufficient to command respect and instill fear in the minds of subordinates. To hold that the National Labor Relations Act contemplated the representation of supervisory employees by the same organizations which might represent the subordinates would be to view the statute as repudiating the historic prohibition of the common law against fiduciaries serving conflicting interests."

The Board followed the *Maryland Dry Dock* decision in *Matter of Boeing Aircraft Company*, 51 N. L. R. B. 66; *Matter of Murray Corp. of America*, 51 N. L. R. B. 94, and *Matter of General Motors Corp.*, 51 N. L. R. B. 457. In the instant case, therefore, the Board has reversed its view as to the availability of foremen for collective bargaining under the Act. It states that following the *Maryland Dry Dock* decision, the Board noted that the potential dangers which concerned the majority of the Board in that case had not materialized in cases where the petitioning foreman is independent and remains so. Finding the Foreman's Association of America in this case to be independent, the Board held that to deny the representation would deprive the foremen of a substantial right, and to grant it would not be a disadvantage to industry.

The controlling questions are: (1) whether the supervisory employees involved herein are entitled to or excluded from the privileges accorded by the National Labor Relations Act and (2) if they are entitled to the privileges of the Act whether the unit established by the Board is appropriate to effectuate the purposes of the Act.

If these foremen fall within the coverage of the statute it is immaterial whether their grievances are or, are not great, for they have a right, just as employees of the rank and file, to organize and bargain collectively. This is the principal issue in the case.

The controlling statutes are sections 152 (2) and (3) and section 157 of Title 29, U. S. C. Section 157 provides

that "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." If the foreman, under this section, is rightly considered an employee, the Board's decision that he has the right to organize with other foremen in the independent union involved in this case, is correct. The serious controversy is precipitated by the definitions in section 152 of the terms "employer" and "employee." Packard contends that within section 152 (2) the foreman is an employer for he is a person "acting in the interest of an employer, directly . . .," and that the foreman's duties are so preeminently those of management that he cannot be considered even for the purposes of this case as an employee. The Board maintains that under section 152 (3) it is plain that the foreman should be regarded as an employee, because the term "employee" is specifically defined as including "any employee," excluding only agricultural laborers, domestic servants, or persons employed by their immediate families.

The legislative history does not assist in the solution of the problem. The statute neither specifically includes supervisory officials of any kind nor specifically mentions officials, as does the Railway Labor Act, Title 24 U. S. C., section 151, which lists "an employee or subordinate official" among the employees covered by the Act. Nor does it exclude supervisory officials, unless by implication in the phrase "acting in the interest of an employer, directly or indirectly."

The foreman plainly acts in the interest of management. As succinctly stated in Bulletin 66 of the United States Department of Labor, Division of Labor Standards, "The foreman is the operative executive of management . . ., the official contact for workers and shop stewards . . ., the department executive. . . ." This same bulletin states, and under this record the statement is correct, "It goes without saying that the foreman's pri-

mary responsibility is to protect the interests and rights of management."

Moreover, the Board and the courts have repeatedly held that the foreman acts for his employer to such an extent that his statements and conduct, if hostile to the union, make the employer liable under an unfair labor charge. *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72; *National Labor Relations Board* v. *Marquette Metal Products Co.*, 152 Fed. (2d) 964 (C. C. A. 6); *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 598. This is true even though the employer has not authorized such statements or conduct. *Matter of Tenn-Copper Co.*, 9 N. L. R. B. 117, 118; *Matter of Inland Steel Co.*, 9 N. L. R. B. 783, 808; *Matter of American Steel Scraper Co.*, 29 N. L. R. B. 939, 943; *Matter of Schult Trailer, Inc.*, 28 N. L. R. B. 975, 993. *In Matter of Emsco Derrick & Equipment Co.*, 11 N. L. R. B. 79, 87, the Board significantly declared: ". . . the supervisor acts as an agent for the employer, and his acts are necessarily those of the employer unless effectively disavowed." The same doctrine was emphatically declared in *H. J. Heintz Co.* v. *National Labor Relations Board*, 311 U. S. 514, in which the employer was held responsible although it had not proposed or stimulated the formation of a plant union. The court held the employer responsible for unauthorized activities of supervisory employees, not upon the principle of agency or respondeat superior, but under the broad provisions of the Act condemning such activities as constituting an unfair labor practice.

Likewise the membership of foremen and supervisory employees in an independent or plant union has repeatedly been held by the Board to constitute evidence of employer domination calling for the disestablishment of the independent or plant union. These decisions recognize the close relationship between the foreman and management, and are relied on by Packard as establishing not only that foremen constitute the front line of management, but that they act so directly "in the in-

terest of the employer" that they are excluded from the benefits of section 157, Title 29 U. S. C. But these considerations merely outline the difficulty of the problem rather than decide it. As stated by the chairman of the Board, "The issues in this case can not be analyzed in terms of black and white. They present a study in gray. Both company and Union present their arguments in good faith; no one can be wholly right or wholly wrong in a matter of this sort."

We think that in view of the decision of the Supreme Court in *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, and also in view of the holdings of other courts with reference to the status of the foreman, it cannot be said that he is automatically deprived of the right of collective bargaining to which employees are entitled under section 157, because he has joined the ranks of front-line management. The Supreme Court said in the *Hearst* case that the term "employee," "like other provisions, must be understood with reference to the purpose of the Act and the facts involved in the economic relationship." Considering the definition of employer in section 152 (2), "with reference to the purpose of the Act," we think it does not include foremen. No statement of any congressional committee or representative appears including foremen in the definition of "employer." The sweeping character of the definition is explained by the fact that Congress evidently thought the employer must be held responsible for any effort of his supervisors to destroy collective bargaining.

In spite of the numerous decisions penalizing the employer for acts of his foremen, held to constitute unfair labor practice, we find no case in which a foreman has ever been held to be deprived of the right of organizing with his fellow-foremen. In fact in the one case in which the precise point was raised, *National Labor Relations Board* v. *Skinner & Kennedy Stationery Co.*, 113 Fed. (2d) 667 (C. C. A. 8), the court held that the foreman is an employee for the purpose of pressing his personal

needs and demands upon his employer. In *Eagle-Picher Mining & Smelting Co.* v. *National Labor Relations Board*, 119 Fed. (2d) 903 (C. C. A. 8), affirmed on other grounds, 325 U. S. 335, a chemist who was head of the research department was held to be an employee. In *National Labor Relations Board* v. *Star Publishing Co.*, 97 Fed. (2d) 465 (C. C. A. 9), branch managers were held to be employees, while in *National Labor Relations Board* v. *American Potash & Chemical Corp.*, 98 Fed. (2d) 488 (C. C. A. 9), a foreman was reinstated upon the ground that he had been unfairly discharged. Cf. *Hazel-Atlas Glass Co.* v. *National Labor Relations Board*, 127 Fed. (2d) 109 (C. C. A. 4). In *Jones & Laughlin Steel Corp.* v. *National Labor Relations Board*, 146 Fed. (2d) 718, 720 (C. C. A. 6), the dual character of the relationship was pointed out with reference to plant guards, it being held that the plant guards are employees for purposes of organization; but because of their public functions, the court denied the petition of the Board to enforce an order permitting the plant guards to be organized by the same union which represented the production employees.

We adhere to the principles stated in *Jones & Laughlin Steel Corp.* v. *National Labor Relations Board*, and consistent with that declaration, we conclude that the foreman, although he is part of the front line of management in his obligation to get out the work, to negotiate grievances and to perform the manifold responsibilities heretofore described more fully, in his relationship to his employer with reference to his own wages and conditions of labor is an employee, entitled to the benefits of section 157.

The Board's decision that the supervisory employees involved may properly be grouped in one unit is also correct. The authority to determine the appropriate unit is primarily vested in the Board. Section 159 (b). If reasonably exercised, its decision cannot be set aside. *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 313 U. S. 146. *National Labor Relations Board* v. *Hearst Publications, Inc.*, supra, 133. The duties vested

in the general foremen, foremen, assistant foremen and special assignment men have been described above. The similarity of their obligations which compels them at times to act interchangeably and of the privileges which set them all off from the workers of the rank and file, make them a group by themselves, necessarily experiencing the same needs, having in general the same conception of the relationship between them and their employer. The decision of the Board is justified under this record.

Since the union involved is independent and neither a part of nor controlled by the union representing the production workers, we also uphold the decision as to the propriety of the exclusive bargaining representative named by the Board. This is a situation diametrically opposite to that presented in *Jones & Laughlin Steel Corp. v. National Labor Relations Board*, supra, where the bargaining agent designated was the identical union which represented the production workers. As found by the panel of the War Labor Board, it is not appropriate for supervisors "who are responsible for discipline, assignment of work, rate adjustments and promotions, who represent the employers in handling grievances of rank and file workers, and who generally represent higher management in dealing with the rank and file workers, to be subject to discipline by a union which is controlled directly or indirectly by the men whom they supervise. The effectiveness of management requires that it have its own uncontrolled agents to represent it in dealing with the rank and file, just as the rank and file are entitled to have their own uncontrolled representatives for dealing with higher management."

So far as the present designation is concerned, it leaves the foremen uncontrolled agents in dealing with the rank and file, and no reason appears to anticipate that the independence of the Foreman's Association of America will in the immediate future be destroyed.

The petition of the Board for an order of enforcement is granted, and a decree will be issued in conformity with this opinion.

Opinion

SIMONS, Circuit Judge (dissenting). Undoubtedly in ordinary parlance, and by common law tests foremen are employees. So also are superintendents, department heads, managers, and executive officers. It has been made plain however by the Supreme Court that in interpreting the National Labor Relations Act common law tests are not controlling. So those who in other aspects may be independent contractors are brought within the sweep of the term "employees" by "underlying economic facts rather than technically and exclusively by previously established legal classifications." *N. L. R. B.* v. *Hearst Publications*, 322 U. S. 129. Similarly the responsibility of employers is not narrowly to be restricted by the doctrine of *respondeat superior*, and in controversies respecting unfair labor practices supervisory employees are held to speak for management, even though unauthorized or expressly forbidden so to do. *International Ass'n of Machinists* v. *N. L. R. B.*, 311 U. S. 72; *Heintz* v. *N. L. R. B.*, 311 U. S. 514; *N. L. R. B.* v. *Link-Belt Co.*, 311 U. S. 584. This principle we have dutifully applied. *Consumers Power Co.* v. *N. L. R. B.*, 113 F. (2d) 38; *N. L. R. B.* v. *Thompson Products*, 130 F. (2d) 363; *N. L. R. B.* v. *Mt. Clemens Pottery Co.*, 147 F. (2d) 262.

As disclosed in the majority opinion, respondent's foremen are a privileged class, perform no manual work, and constitute the front line of management. Their recommendations concerning pay, transfer, lay-off, discharge, demotion, and discipline are usually followed. It has been held that if foremen join or encourage plant unions, such unions are employer dominated, and so company unions. *International Ass'n of Machinists* v. *N. L. R. B.* (supra). If foremen seek information as to union organization plans it is employer espionage condemned by the Act. *N. L. R. B.* v. *Cleveland-Cliffs Co.*, 133 F. (2d) 295 (C. C. A. 6). Foremen are employers not only by reason of their duties and responsibilities, but by the inescapable implication of Sec. 152 (2) which classifies as an employer one who is "acting in the interest of an employer, directly or indirectly." Sec. 152

(3) refers to but does not define "employee." The two sections must be read in *pari materia*, and so considered the breadth of the one necessarily limits the ambit of the other.

Up to the present case, the Labor Board had held in a long series of decisions that foremen do not constitute an available unit for collective bargaining. The basis for departure from earlier decisions is that dangers previously apprehended have not materialized. We are concerned however with the interpretation of a statute and not the making of a policy. Congress formulates policy and the court's function is to ascertain the Congressional purpose from the terms of its enactment. Since controlling authority interprets the Labor Act as clothing supervisory employees with the authority and responsibility of employers, collective bargaining provisions are not available to them. I am in accord with the earlier view of the Labor Board and the panel of the War Labor Board and would deny enforcement to the present petition.

PETITION FOR REHEARING

(Filed August 30, 1946)

United States of America

In the

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

No. 10,157

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

PACKARD MOTOR CAR COMPANY,
Respondent.

PETITION OF RESPONDENT PACKARD MOTOR CAR COMPANY FOR REHEARING

Now comes Packard Motor Car Company, respondent in the above entitled cause, by Louis F. Dahling, and Bodman, Longley, Bogle, Middleton & Armstrong, its attorneys, and petitions this Honorable Court for a rehearing of this cause for the following reasons:

I. Because the majority of the Court erred in holding that foremen having the status, power and authority of the Packard foremen were employees within the meaning of the National Labor Relations Act.

II. Because the majority of the Court erred in holding that a unit consisting of the general foremen, foremen, assistant foremen and special assignment men was an appropriate unit to effectuate the purposes of the National Labor Relations Act.

III. Because the majority of the Court, after finding that the foremen at Packard were the front line of management and acted as the representatives and agents of Packard Motor Car Company, erred in refusing to apply the universal rule that such an agent and representative will not be allowed to enter or be forced to enter into relationships which might conflict with the interests of his principal.

IV. Because the construction placed upon the National Labor Relations Act by the majority of the Court will result in such an unwarranted, arbitrary and unreasonable interference with the rights of the Packard Motor Car Company as to violate the provisions of the Fifth Amendment of the Constitution.

Respectfully submitted,

LOUIS F. DAHLING,
BODMAN, LONGLEY, BOGLE, MIDDLETON & ARMSTRONG,
Attorneys for Respondent, Packard Motor Car Company.

CERTIFICATE OF COUNSEL

Louis F. Dahling, attorney for the Packard Motor Car Company, the petitioner herein, hereby certifies that in his judgment the foregoing petition for rehearing is well founded and that the same is not interposed for delay.

LOUIS F. DAHLING,

Louis F. Dahling,
Attorney for Packard Motor Car Company.

Dated: Detroit, Michigan,
August 23, 1946.

United States of America

In the

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

No. 10,157

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

PACKARD MOTOR CAR COMPANY,
Respondent

BRIEF IN SUPPORT OF PETITION FOR REHEARING

I.

THE MAJORITY OF THE COURT ERRED IN HOLDING THAT FOREMEN HAVING THE STATUS, POWERS AND AUTHORITY OF THE PACKARD FOREMEN WERE EMPLOYEES WITHIN THE MEANING OF THE NATIONAL LABOR RELATIONS ACT

The majority of the Court found that the foremen of the respondent are the front line of management; are responsible for the quantity and quality of the production of the

work in the area of their supervision; must maintain production in their departments and see that any breakdown is remedied, and that repairs are made; must instruct the foremen or assistant foremen under them and see that they properly execute their duties; that they do no manual labor; that each of them is principally responsible for the maintenance of quality and quantity of production in the area under his supervision; that all classes of foremen make suggestions of improvement of production, and that these suggestions are very largely adopted; that the general foremen make recommendations to the superintendents as to rates of pay, transfer, rehire, lay off, discharge and discipline of the foremen, and that these recommendations are usually followed; that the foremen and assistant foremen likewise make recommendations which are usually followed concerning the pay, discharge, demotion, discipline, etc., of the workers under them.

The majority of the Court also cites with approval the findings of the Panel of the National War Labor Board that higher management cannot escape dependence upon the foremen's knowledge of men and conditions, and upon the wisdom and fairness of the foremen's judgment, and that on many matters although the foremen may only recommend action, his recommendations must usually be accepted by superiors who know too little about the circumstances of specific cases to reject the foremen's recommendations, and that no matter how well conceived the Company's production and labor policies may be at the top, they are in fact no better than they become at the hands of the foremen who execute them.

Congress in Section 1 of the National Labor Relations Act (Sec. 152 (1) of Title 29, U.S.C.) sets forth the reasons for the enactment of the legislation. The purpose is stated by Congress to be the elimination of substantial obstruc-

tions to the free flow of commerce by the removal of sources of industrial strife and unrest through the protection, by law, of the right of "employees to organize *and bargain collectively.*" (Emphasis supplied.)

Collective bargaining in labor matters can only be between the "employer" and the "employee." Congress realized that mass industry is conducted through corporate organizations and that these corporations, as artificial persons, can only act through human agents. Congress, therefore, defined the term "employer" to include any person acting in the interest of any employer, directly or indirectly (Sec. 152 (2)). Thus any person acting in the interest of any employer to carry out the purpose of the act, namely collective bargaining, is an "employer."

Collective bargaining does not end with the execution of a contract between the employer and a labor union. Collective bargaining continues on a day-to-day basis. The terms and conditions of the labor contract must be interpreted, applied, and enforced in connection with situations and grievances which arise from day to day. The foremen at Packard are admittedly the front line of management and are the level of management and the only level of management in direct contact with the rank and file workers. These foremen are called up to carry out this very important day-to-day collective bargaining "in the interest of" the Packard Motor Car Company.

The Packard contract with the U.A.W.-C.I.O., the rank and file union (R. III 1409-1420) and other agreements with that union cover many subjects, including among the more important, rates of pay, transfers, lay offs, rehiring, demotions, discharges and discipline. The majority of the Court found that the foremen of Packard have charge of these matters and their recommendations in connection therewith must usually be accepted. In other words with re-

spect to these matters the foremen collectively bargain with the union representatives as provided in the labor contract. Thus, the foremen of Packard under the very finding of the majority of the Court act "in the interest" of their employer, the Packard Motor Car Company, to carry out the very purpose of the statute.

Furthermore, the majority of the Court pointed out that the National Labor Relations Board had significantly declared that in all labor matters "* * * the supervisor acts as an agent for the employer, and his acts are necessarily those of the employer unless effectively disavowed," and the majority of the Court cited with approval the statement in Bulletin 66 of the United States Department of Labor, Division of Labor Standards, that "The foreman is the operative executive of management * * *, the official contact for workers and shop stewards * * *, the department executive * * *" and that "It goes without saying that the foreman's primary responsibility is to protect the interest and rights of management."

The conclusion would seem inescapable that the foremen of Packard, based upon the findings of the majority of the Court in this case, are persons "acting in the interest of an employer"—The Packard Motor Car Company—and are, therefore, "employers" within the meaning of the National Labor Relations Act.

The majority of the Court held, however, in effect, that under the language of the Act the foreman at Packard in his relations with the rank and file workers is an "employer" while in his relations with Packard he is an "employee" and as such, entitled to the benefits of the Act. In other words, he has a dual personality. It is respectfully submitted that this conclusion is not supported by the language of the Act, the legislative history of the Act, or by the action of Congress subsequent to the date of the enactment of the Act.

It seems perfectly clear that Congress realized that all persons on the payroll of a corporation from the president down to the sweepers are "employees" in the sense in which that word is commonly used. However, for the purpose of collective bargaining, Congress specifically included some of these "employees" in the category of the "employer.". Persons employed by Packard who act in the interest of Packard, particularly in carrying out the purposes of the National Labor Relations Act, are specifically defined by Congress to be "employers" under the Act.

It should be noted that Congress first defines the term "employer" to include a person acting in the interest of an employer. By this definition, as applied to Packard, Congress carves out and sets apart as "employers" under the Act a certain group of the personnel of Packard. Congress then defines the term "employee" as including any employee. The Act does not provide that the "employer" group of the personnel shall have the right of collective bargaining under the Act. Those rights are given to the "employee" group under the Act. As stated in the dissenting opinion, the two sections of the Act dealing with the terms "employee" and "employer" (Section 152 (2) (3)) must be read in *pari materia.*

It is the general rule that where statutory provisions relate to the same persons or things, or to the same class of persons or things, or to the same or a related subject, they are regarded as in *pari materia. Sanford v. Commissioner*, 308 U. S. 39; *Employers Reinsurance Corp v. Bryant*, 299 U. S. 159.

As stated in *50 Am. Jur.* 344-345:

> "It is a fundamental rule of statutory construction that sections and acts *in pari materia*, and all parts thereof, shall be construed together and com-

pared with each other." (See also *Sanford v. Commissioner, supra.*)

It is a general principle of statutory interpretation that the mention of one thing implies the exclusion of another. *Walla v. Walla Walla Water Company*, 172 U. S. 43. The rule is stated in *50 Am. Jur.* 239 as follows: "Thus, a statute that directs a thing to be done in a particular manner, or by certain persons or entities, ordinarily implies that it shall not be done in any other manner, or by other persons or entities." Conversely, a statute which includes certain persons under a specific category impliedly excludes them from other categories.

It must follow, therefore, that the foremen of Packard are "employers" and not "employees" within the meaning of the National Labor Relations Act.

The majority of the Court states that:

> "The statute neither specifically includes supervisory officials of any kind nor specifically mentions officials, as does the Railway Labor Act, Title 24 U.S.C. Section 151, which lists 'an employee or subordinate official' among the employees covered by the Act."

The Railway Labor Act was enacted in 1926 and amended less than a year before the introduction of the National Labor Relations Act. It is submitted that if Congress felt that in the Railway Act it was necessary to specifically provide that a "subordinate official" was an "employee," that the failure of Congress to specifically include foremen and vice-presidents in the definition of "employees" in the National Labor Relations Act, clearly demonstrates that Congress did not intend to include such employees under the coverage of the Act.

Furthermore, it is respectfully submitted that the construction placed upon the Act by the majority of the Court would lead to absurd results. Under that construction, the Vice Presidents of Packard would be an appropriate unit under the Act and the President of the Company could be included in such a unit. Surely no one would seriously argue that Congress intended to protect the Vice Presidents or that they were the "masses" or the "workers," "working men" or the "wage earners" that the members of Congress had in mind when the National Labor Relations Act was debated in Congress (See pages 29-30, Packard brief), and neither would anyone seriously argue that the salaried foremen of Packard, with their high pay and privileges, come within such classifications.

It is also pertinent to note that as stated in the Packard brief it was not until the seventh year of its existence that the Board was called upon to decide whether a unit consisting of supervisors was an appropriate unit under the Act. Surely, if the strikes and industrial strife and unrest which Congress sought to cure by the Act had been caused by supervisors, the Board's aid would have been sought immediately after the passage of the Act.

The Court in determining the meaning of a statute may properly take into consideration the subsequent action of Congress and the interpretation which Congress subsequently placed upon the statute. *First Nat. Bank v. Missouri*, 263 U. S. 640; *United States v. Bowling*, 256 U. S. 484.

The Senate of the United States on May 26, 1946 (six days before this case was argued) adopted an amendment to the so-called Case Bill (H. R. 4908), which reads as follows:

"Sec. ——. (a) Section 2 (3) of the National Labor Relations Act is amended by inserting before

the period at the end thereof a comma and the following: 'or any individual employed as a supervisor.'

"(b) Section 2 of such act is further amended by inserting at the end thereof the following:

"'(12) The term "supervisor" means any individual having authority, in the interest of the employer—

"'(a) to hire, transfer, suspend, lay off, recall, promote, demote, discharge, assign, reward, or discipline any employees of the employer, or to adjust their grievances, or to effectively recommend any such action; or

"'(b) To determine, or make effective recommendations with respect to the amount of wages earned by any employees, or to apply or make effective recommendations with respect to the application of, the factors upon the basis of which the wages of any employees are determined, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;

"'but such term shall not include any individual in an occupation of a character which under prevailing custom prior to July 1, 1935, was covered by collective-bargaining agreements.'

"(c) Nothing herein shall prohibit a supervisory employee from becoming or remaining a member of a labor organization."

Senator Ellender in introducing the amendment stated:

"Its purpose is to *clarify* the position of the supervisory employee under the National Labor Relations Act by explicitly setting forth the intent of Congress to exclude persons vested with *bona fide* supervisory authority from its provisions." (92 Cong. Rec. 5805.) (Emphasis supplied.)

Senator Stanfill, in discussing the amendment, stated:

> "Mr. President: When the National Labor Relations Act was made a law everyone regarded foremen as employers or responsible agent thereof, rather than employees, as the terms were used for the purposes of the statute." (92 Cong. Rec. 5158.)

The above amendment was passed by the Senate by a vote of 48 to 30, and thereafter was adopted by the House of Representatives by a vote of 258 to 155. Subsequently, the Act containing the above provisions was vetoed by the President and returned to the House, and that body again voted in favor of the Act, failing to override the President's veto by a margin of only 5 votes.

It seems clear, therefore, when the action of the Senate and the House of Representatives on the Case Bill is considered in connection with the language used by the members of Congress in discussing the National Labor Relations Act prior to its enactment and which is set forth in the brief filed by Packard in this proceeding, that neither the House or the Senate ever intended that foremen having the duties and responsibilities and the status of the Packard foremen should be considered as employees within the meaning of the Act.

It is respectfully submitted that based upon the findings of the majority of the Court as to the duties, powers, responsibilities and status of the Packard foremen; the purposes of the Act; the language of the Act; the historical background against which the Act was adopted; and the legislative history and subsequent action of Congress, the Court should determine that the Packard foremen are not "employees" under the provisions of the National Labor Relations Act.

II.

THE MAJORITY OF THE COURT ERRED IN HOLDING THAT A UNIT CONSISTING OF THE GENERAL FOREMEN, FOREMEN, ASSISTANT FOREMEN AND SPECIAL ASSIGNMENT MEN OF PACKARD WAS AN APPROPRIATE UNIT TO EFFECTUATE THE PURPOSES OF THE NATIONAL LABOR RELATIONS ACT

A general foreman at Packard, as shown by the record, has supervision over the foremen and assistant foremen below him (I, 564, 642, 610, 646, II 999) The majority of the Court found that the general foreman at Packard makes recommendations as to the rates of pay, transfer, rehire, lay-off, discharge and discipline of the foremen under his supervision and that these recommendations are usually followed.

This Court in the case of *N.L.R.B. v. Jones & Laughlin Steel Corporation*, 146 F. 2d 718, held that it was improper for the National Labor Relations Board to certify a rank and file union as the collective bargaining agent of the plant protection men of the Steel Company. The Court said:

> "When these particular Unions were selected as bargaining agents for the plant protection employees, these employees might in an effort to discharge their duty to their employer find themselves in conflict with other members of their Union over the enforcement of some rule or regulation they were hired to enforce. * * * We think that the imposition of such strains upon personal allegiance and personal interest would undoubtedly be detrimental to the public interest and to the free flow of commerce."

The Court in the instant case stated:

> "As found by the panel of the War Labor Board, it is not appropriate for supervisors 'who are re-

sponsible for discipline, assignment of work, rate adjustments and promotions, who represent the employers in handling grievances of rank and file workers, and who generally represent higher management in dealing with the rank and file workers, to be subject to discipline by the men whom they supervise. The effectiveness of management requires that it have its own uncontrolled agents to represent it in dealing with the rank and file, just as the rank and file are entitled to have their own uncontrolled representatives for dealing with higher management.'"

Nevertheless, the majority of the Court in the instant case placed 125 general foremen of Packard in the same unit with the 600 or 700 foremen and assistant foremen who are supervised by these general foremen. The Court would regiment the general foremen, without permitting them a voice in the matter, into the same unit with the very men over whom they have for all practical purposes the power to demote, discipline and discharge.

The same bargaining committee that represented the foremen and assistant foremen would represent the general foremen. What chance would the general foremen have under such conditions where they would be outvoted almost 7 to 1 by the very men they supervise? It goes without saying that the conscientious general foreman would be eliminated, and the whole function of general foremen as a part of supervision would cease to exist.

The very same reasons stated by the War Labor Board Panel, and approved by the majority of the Court, for excluding supervisors from rank and file units, and very same reasons advanced by this Court for excluding plant guards from a rank and file unit in the *Jones & Laughlin* case, would require this Court to refuse to include the general foremen in the same unit with the men they supervise.

It is submitted that the action of the majority of the Court in including the general foremen, foremen, assistant foremen and general assignment men in one union is contrary to and inconsistent with the principles laid down by the Court in the *Jones & Laughlin* case *supra*, and in the majority opinion in the instant case.

III.

THE MAJORITY OF THE COURT AFTER FINDING THAT THE FOREMEN AT PACKARD WERE THE FRONT-LINE OF MANAGEMENT AND ACTED AS AGENTS AND REPRESENTATIVES OF MANAGEMENT ERRED IN REFUSING TO APPLY THE UNIVERSAL RULE OF LAW THAT AN AGENT WILL NOT BE ALLOWED TO ENTER INTO RELATIONSHIPS WHICH MAY CONFLICT WITH THE INTERESTS OF HIS PRINCIPAL

The majority of the Court in the present case cites with approval the language of the National Labor Relations Board in the *Matter of Emsco Derrick & Equipment Company*, 11 N.L.R.B. 79, 87, where the Board stated that:

> "The supervisor acts as an agent for the employer and his acts are necessarily those of the employer, unless effectively disallowed."

The majority of the Court further stated:

> "The foreman primarily acts in the interests of management. As succinctly stated in Bulletin 66 of the United States Department of Labor, Division of Labor Standards, 'the foreman is the operative executive of management * * *, the official contact for workers and shop stewards * * * the department executive * * *.' This same Bulletin states, and under this record the statement is correct, 'It goes without saying that the foreman's primary responsibility is to protect the interests and rights of management.'"

As pointed out in the Packard Brief, the law prohibits agents from entering into relationships which might cause or result in a conflict with the interests of the principal. This rule is one of the oldest known to law. It is of universal application and must have been understood by Congress when the Act in question was adopted. If Packard is forced to collectively bargain with the Foremen's Association of America, even the large number of foremen who voted against such representation and who did not favor being regimented into a union, will be placed in the position where union pressure may well overcome their personal desires.

It is submitted that the Court erred in holding that foremen are agents of Packard and then requiring these agents to be placed in a position that might result in disloyalty to the principal. It is submitted that Congress could never have intended that the Act should be so construed.

IV.

THE DECISION OF THE MAJORITY OF THE COURT AND THE CONSTRUCTION PLACED BY IT UPON THE NATIONAL LABOR RELATIONS ACT WOULD RESULT IN SUCH AN UNWARRANTED, ARBITRARY AND UNREASONABLE INTERFERENCE TO THE RIGHTS OF PACKARD AS TO VIOLATE THE PROVISIONS OF THE FIFTH AMENDMENT TO THE CONSTITUTION

This question was raised by Packard's motion to dismiss the proceedings before the National Labor Relations Board and in the brief filed by Packard with the National Labor Relations Board. It was not answered by the Board.

The position was taken by Packard in the principal brief filed in this case, that the construction placed upon the

Act by the Board in this proceeding would result in such an unwarranted arbitrary and unreasonable interference to the rights of Packard as to violate the provisions of the Fifth Amendment to the Constitution.

For the reasons stated in the principal brief it is submitted that the decree of the Court in this proceeding enforcing the order of the National Labor Relations Board is unconstitutional.

CONCLUSION

It is respectfully submitted that for the reasons set forth above the Petition of the Packard Motor Car Company for a Re-hearing should be granted.

LOUIS F. DAHLING,
BODMAN, LONGLEY, BOGLE, MIDDLETON & ARMSTRONG,
Attorneys for Packard Motor Car Company.

Dated: Detroit, Michigan,
August 23, 1946.

ORDER DENYING PETITION FOR REHEARING

(Filed September 30, 1946)

The petition for rehearing is denied.

SIMONS, Circuit Judge, dissenting:

Review of the legislative history of the Wagner Labor Act, the labor literature of the period preceding and following its enactment, and the many decisions interpreting and applying it, leads inescapably to the following conclusions: (1) That the dominant purpose in the minds of its proponents was the fashioning of mechanism by which "laborers," "workers" and "production men" in the great mass industries, until then impotent, might achieve bargaining power on a parity with the economic power which the development of such industries had lodged in the hands of the employing class;[1] (2) That prior to and for a substantial period following the enactment, supervisory employees were not identified with the labor movement, were for the most part without labor consciousness, generally considered themselves allied with the employing class and occupying a status above standards needing unionization;[2] and (3) That orders of the Labor Board imposing discipline upon employers for violations of the Act stem almost invariably from discrimination, threats, espionage and domination by such supervisory employees.[3]

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[1] Testimony of William Green, President of the American Federation of Labor; Francis Biddle, Chairman of the NLRB under the NIRA; Lloyd K. Garrison, Dean of the University of Wisconsin Law School, first Chairman of NLRB under NIRA; Charlton Ogburn, counsel for the AFL; reported in "Hearings before the Committee on Education and Labor, United States Senate, 74th Congress, 1st Session, on S 1958 (1935) U. S. Gov't Printing Office." Senator Wagner's discussion of the Wagner Act, 79th Congressional Record No. 101, p. 7846 et seq., May 15, 1935; Senator Wagner, 79th Congressional Record No. 102, pp. 7949 to 7960, 7967 to 7980, May 16, 1935; Senator Norris; Vol. 79 Congressional Record No. 102, pp. 7949 to 7960, 7967 to 7980.

[2] The Status of Supervisory Employees under the NLRB. Walter L. Daykin, Associate Professor of Labor Economics, University of Iowa, 29 Iowa Law Review 297. *In re Maryland Drydock Co.*, 49 NLRB 733; *In re Union Collieries Coal Co.*, 41 NLRA 165, dissenting opinion of Gerard D. Reilly.

[3] Almost any Labor Board case decided by a Court of Appeals or the Supreme Court of the United States.

Clerk's Certificate

WHEREFORE, I adhere to the views expressed in the dissent to the decision in the above cause, — Fed. (2d) —, always keeping in mind that the Labor Act must be construed in the light of the social and economic conditions that brought about its passage, and I would grant the petition for rehearing.

CLERK'S CERTIFICATE

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SIXTH CIRCUIT

I, J. W. MENZIES, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of *National Labor Relations Board* v. *Packard Motor Car Company*, No. 10,157, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 2nd day of October, A. D. 1946.

J. W. MENZIES,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

(SEAL)

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 658

ORDER ALLOWING CERTIORARI—Filed December 9, 1946.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

United States of America

In the

Supreme Court of the United States

OCTOBER TERM, 1946

No. .....

PACKARD MOTOR CAR COMPANY,
a Michigan corporation,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

LOUIS F. DAHLING,
BODMAN, LONGLEY, BOGLE,
MIDDLETON & ARMSTRONG,
Attorneys for Petitioner, Packard Motor Car Company,
1400 Buhl Building,
Detroit 26, Michigan.

Interstate Brief & Record Co., Case Bldg., 457 Fort St. W., Detroit 26, Mich.

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OCTOBER TERM, 1946

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PACKARD MOTOR CAR COMPANY,
a Michigan corporation,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent

PETITION FOR WRIT OF CERTIORARI

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

SUMMARY STATEMENT OF MATTER INVOLVED

This case involves the interpretation of the National Labor Relations Act (49 Stat. 499, 29 U. S. C., Sec. 151) and its application to the foreman level of management of the petitioner.

The purpose of the Act as announced by Congress, is to relieve obstructions to the free flow of commerce caused by industrial strife and unrest by providing by law for collective bargaining between certain employers and the representative selected by a unit of employees found to be appropriate to effectuate the purposes of the act by the National Labor Relations Board. If the employer refuses to collectively bargain with the representative so selected and certified by the Board, the Board may issue a cease and desist order and petition the Circuit Court of Appeals for an enforcement decree.

Section 2 of the Act provides that 'The term 'employer' *includes any person acting in the interest of any employer directly or indirectly* * * *,* and the same Section provides that, "The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer * * * but shall not include any individual employed as an agricultural laborer."

The petitioner is a Michigan corporation of Detroit, Michigan, whose normal business is the manufacture and sale of automobiles and whose business at the time of the proceedings before the Board in this case was the manufacture of war materials. The petitioner has approximately 32,000 rank and file employees (R. III, 1815), who since 1937 have been represented by the United Automo-

*Emphasis supplied unless otherwise indicated.

bile Workers of America, affiliated with the Congress of Industrial Organizations, hereinafter referred to as the UAW-CIO (R. III, 1409-1420; R. I, 403).

The manufacturing operations of your petitioner are broken down into two main divisions which are in turn divided into approximately 20 small divisions, which in turn are subdivided into approximately 300 departments. Exhibits 22, 22A-22J, 23A-23J (R. II, 802-807; III, 1479-1498).

To directly supervise the manufacturing operations of the rank and file workers, petitioner employs approximately 125 general foremen, 643 foremen, 273 assistant foremen, and 65 special assignment men, who have the qualifications of foremen and who are used to replace and substitute for foremen and work on special assignments (R. II, 801; R. III, 1817). These supervisors will sometimes hereinafter be referred to as the foreman level of management. The petitioner almost invariably selects its assistant foremen from among the rank and file employees; its foremen from the ranks of assistant foremen, and its general foremen from the ranks of foremen (R. II, 812, 813).

The foreman level of management is in turn supervised by the higher levels of management, consisting of the president, two vice-presidents, seven superintendents and managers of plants, sixteen managers of divisions, thirty-two assistant managers of divisions and twenty superintendents of divisions, Exhibits 22, 22A-22J, 23A-23I (R. II, 802-807; III, 1479-1498).

The Circuit Court of Appeals in the majority opinion (R. III 2097) found that the foremen of the petitioner have the following duties, responsibilities and privileges:

"* * * All classes of foremen have certain privileges not enjoyed by the rank and file worker. Their salaries are substantially larger than the wages received by the production force. General foremen, with overtime pay, receive approximately $500 a month; foremen approximately $450 with overtime; assistant foremen approximately $410 with overtime. The special assignment men are paid about the same as general foremen or foremen. These supervisory employees are paid for justifiable absences. They are given a more general vacation with pay than other workers, and receive separation pay when they leave the company. They are paid for holidays, and permitted to report half an hour late for work without being deducted in pay.

"The foremen are the front line of management. At Packard the general foreman is in charge of one or more departments, sometimes as high as four departments. In some departments there are no foremen, only assistant foremen, and in such cases the duties of the assistant foremen correspond to those of the foremen. When a general foreman has charge of several departments, he sometimes has an assistant foreman in charge of each department. In general, foreman and assistant foremen have charge of a division of the work of the entire department, or in certain instances they are the direct assistants under the general foreman in connection with the work of the whole department. The special assignment men are trouble shooters who move from division to division in the plant, but they have the qualifications of general foremen and foremen, and also their authority.

"At Packard each foreman is responsible for the quantity and quality of production of the work in the area under his supervision. He must check the hourly production report and maintain production in his department. He must see that any breakdown is remedied, and that repairs are made. He

> has to instruct the foremen or assistant foremen under him and see to it that they properly execute their duties. None of the men in the four classes involved here performs any manual work, each of them being principally responsible for the maintenance of quality and quantity of production in the area under his supervision. The general foreman makes recommendations to the superintendent as to the rates of pay, transfer, rehire, lay-off, discharge and discipline of the foremen. These recommendations are usually followed. The foremen and assistant foremen likewise make recommendations, which are usually followed, concerning the pay, discharge, demotion, discipline, etc., of the workers under them. All classes of foremen make suggestions for the improvement of production, and these suggestions are very largely adopted."

In addition, the foremen are in charge of the first steps of the grievance procedure provided for in the contract with the UAW-CIO, Exhibit 23, (R. I, 403; III, 1410); and most grievances are settled at this stage of the grievance procedure (R. I, 530, 616).

The Foreman's Association of America, an alleged unaffiliated labor organization, on January 15, 1943, instituted proceedings under the Act (R. I, 44; II, 1299), and the Board after a hearing held (one member dissenting) that all of the personnel in the foreman level of management of the petitioner at Detroit, Michigan, were "employees" within the meaning of the Act, constituted a unit appropriate for the purpose of collective bargaining under Section 9(b) of the Act, and directed that an election be held to determine whether the foremen comprising the unit wished to be represented by the Foreman's Association of America (R. III, 1795, 1820, 1821).

The election was held and 666 votes were cast in favor of the Foreman's Association, 435 votes against it, and

155 challenged votes which were not counted. The Board on April 18, 1945, certified the Foreman's Association as the exclusive bargaining representative of the Union (R. III, 1836-1837).

The petitioner refused to recognize the certification and the Board filed its complaint alleging that petitioner was guilty of unfair labor practices within the meaning of Section 8(1)(5) and Section 2 (6)(7) of the Act (R. III, 1782) and after hearing thereon entered an order directing the petitioner to cease and desist from continuing to refuse to collectively bargain with the Foreman's Association (R. I, 30).

Thereafter, the Board, pursuant to Section 10(e) of the Act filed a petition in this case for enforcement of its order (R. I, 1-4). Two opinions were handed down by the Circuit Court of Appeals on August 12, 1946 (R. III, 2096-2108). Two justices upheld the Board, and one justice held that the petition for enforcement should be dismissed. The Circuit Court of Appeals entered its final judgment enforcing the order of the Board on August 12, 1946 (R. III, 2095), and on September 30, 1945 (one justice dissenting) denied the petitioner's Petition for Rehearing (R. III, 2127).

JURISDICTIONAL STATEMENT

Section 10(e) of the Act provides that the decree of the Circuit Court of Appeals entered upon a petition for enforcement shall be final "except that the same shall be subject to review * * * by the Supreme Court of the United States and upon writ of certiorari or certification as provided in Section 239 and 240 of the Judicial Code, as amended (28 U. S. C., Sections 346 and 347)." Jurisdiction is invoked under the above provisions of the Act and under Section 240 of the Judicial Code.

QUESTIONS PRESENTED

The questions presented are as follows:

(1) Are the petitioner's general foremen, foremen, assistant foremen and special assignment men employees within the meaning of the National Labor Relations Act?

(2) If the petitioner's general foremen, foremen, assistant foremen and special assignment men are employees within the meaning of the Act, can they be properly included within a unit for the purpose of collective bargaining under the provisions of the Act?

(3) If the petitioner's general foremen, foremen, assistant foremen and special assignment men are employees within the meaning of the Act and may be included in an appropriate unit, do these four classes of foremen constitute an appropriate single bargaining unit for the purposes of collective bargaining or should they be divided into separate units?

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

The United States Circuit Court of Appeals for the Sixth Circuit "has decided an important question of federal law which has not been but should be settled by the Supreme Court" (Sup. Ct. Rule 38 (5)(d)).

This is the first case to be decided by a Circuit Court of Appeals on the question of whether or not supervisory personnel constitute an appropriate unit for collective bargaining under the Act.

The questions presented are important and should be reviewed by the Supreme Court because:

(1) The decision in this case will materially affect the mass production automobile industry in the United States and every other type of mass production industry which employs foremen as part of its managerial structure. This is admittedly a test case. The Board in the instant case, "in view of the importance of the question raised in this case" (R. III, 1792), ordered a public hearing in Washington on behalf of the petitioner, the union and numerous other employer and employee groups. Representatives of many of the largest industrial corporations appeared and opposed an interpretation of the Act which would place the foreman level of management within the provisions of the Act, and under union control and pressures, pointing out that the result would be loss of effective leadership in the foreman level of management and divided loyalty, which would require far-reaching reorganization of the managerial structure of industry, would increase cost of production of consumer goods, and be detrimental to the foremen, to industry, and to the country at large (R. II, 1263-1266, 1269, 1278-80, 1293).

(2) The determination of the issues in this case directly involve the personal and individual rights of a large group of supervisory employees. If these supervisory employees are regimented into a unit represented by a labor union which admittedly has the same purposes and objectives as the labor union which represents the rank and file workers who are supervised by the foremen (R. I, 384, 545), industry may be forced to reduce the status of responsibility of the foremen (R. II, 1264, 1050, 1053).

(3) The National Labor Relations Board since its decision in the instant case has decided a large number of cases involving the questions here presented, and many of these cases will reach a Circuit Court of Appeals. There are also pending before the Board many petitions on behalf of the Foreman's Association and other unions seeking to represent the foremen of industry. An ultimate guiding rule should be announced by the Supreme Court so that there may be uniformity of decision in connection with the questions involved and the court should settle the important federal question as to the applicability of the Act to the foreman level of management.

(4) The decision of the Board in the instant case was not unanimous, Member Reilly filing a dissenting opinion in which he stated: "In my opinion, the decision we are making today does irreparable damage to the delicate balance between the conflicting interests of management and the worker which the National Labor Relations Act

sought to bring about in American industry" (R. III, 1822). The decision of the Circuit Court of Appeals was not unanimous, Justice Simons dissenting and holding that under a proper interpretation of the Act the foreman level of management of the petitioner were not employees within the meaning of the Act.

Wherefore your petitioner prays that a Writ of Certiorari be issued under the seal of this Court, directed to the Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and the proceedings of said Circuit Court of Appeals had in the case numbered and entitled on its docket, "No. 10,157, National Labor Relations Board, Petitioner v. Packard Motor Company, Respondent," to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the decree of said Circuit Court of Appeals be reversed by this Court, and such further relief be granted as to this Court may seem proper.

Respectfully submitted,

LOUIS F. DAHLING,
Attorney for Petitioner Packard Motor Car Company.

Dated: Detroit, Michigan,
October 26, 1946.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

OPINION OF COURT BELOW

The majority and dissenting opinions of the Circuit Court of Appeals for the Sixth District are printed in the record (R. III, 2096-2108). The dissenting opinion filed in connection with the denial of the Petition for Rehearing is printed in the record (R. III, 2127).

JURISDICTION

A final judgment was entered in this cause by the United States Circuit Court of Appeals for the Sixth Circuit on August 12, 1946 (R. III, 2095), and a Petition for Rehearing, filed on behalf of the pettiioner herein, was denied by the Court on September 30, 1946 (R. III, 2127).

The Circuit Court of Appeals has in this case decided an "important question of federal law which has not been, but should be, settled by this Court" (S. Ct. Rule 38 (5) (d)).

STATEMENT OF CASE

Reference is made to the Petition for Writ of Certiorari for a statement of the case and issues involved.

ASSIGNMENTS OF ERROR

The Circuit Court of Appeals erred in holding that the petitioner's general foremen, foremen, assistant foremen and special assignment men were (1) "employees" within the meaning of the National Labor Relations Act, (2) that the foremen of petitioner could be placed in an appropriate unit for collective bargaining purposes under the Act, and (3) that all ranks of foremen could under the Act, be placed in a single unit for that purpose.

ARGUMENT

POINT I

IMPORTANCE OF THE QUESTION OF FEDERAL LAW INVOLVED

1. Importance of question to industry, to the foreman, and to the country at large.

At a public hearing held at the direction of the Board in Washington on February 27, 1945, in connection with this case, representatives of the following corporations appeared: General Motors Corporation; Chrysler Corporation; The Murray Corporation; Nash-Kelvinator Corporation; Hudson Motor Car Company; Thompson Products, Inc.; Standard Steel Spring Company; Aeronautical Products; Continental Motors; Mack Manufacturing Company; U. S. Rubber Corporation; United States Industrial Chemicals, Inc.; Firestone Tire & Rubber Company, together with representatives of many other corporations (R. II, 1255-1286). These representatives of industry took the position that an interpretation of the Act which would require industry to collectively bargain with a union representing its foremen, and foremen thus by legal processes thrown into the union stream, would require a far-reaching reorganization of the managerial structure of industry. The foreman's managerial status would have to be reduced. This would increase costs and affect the cost of living. It would be bad for industry, bad for the foreman, and bad for the country.

2. Action of National War Labor Board indicates importance of question.

The importance of the question involved is further indicated by the fact that the National War Labor Relations Board on May 31, 1944, appointed a Special Panel consisting of Sumner H. Slichter, of Harvard University; William H. Spohn, attorney and labor arbitrator, of Madison, Wisconsin; and Dean Robert D. Calkins, of Columbia University, to hear certain dispute cases involving the Foreman's Association of America and thirteen large corporations (R. III, 1853). Hearings were held by the Panel intermittently in Detroit and elsewhere from June 14, 1944, to October 4, 1945, and the report of the Panel, consisting of 175 pages, appears in the record. Board's Exhibit 19 (R. III, 1852-2082, 1763).

3. The Board has reversed itself twice and its decisions have not been unanimous.

In June, 1942, in a two-to-one decision, the Board held in *Matter of Union Collieries Co.*, 41 N. L. R. B., 961, that a unit consisting of some supervisory employees was an appropriate unit for the purpose of collective bargaining. On May 10, 1943, the Board in *Matter of Maryland Drydock Company*, 49 N. L. R. B., 733, one member dissenting, reversed its decision in the *Collieries* case and held a unit of supervisors was not an appropriate unit under the Act, and followed this ruling in *Matter of Boeing Aircraft Co.*, 51 N. L. R. B., 67; *Matter of Murray Corporation*, 51 N. L. R. B., 94; and *Matter of General Motors Corporation*, 51 N. L. R. B., 457. In the present case, the Board, one member dissenting, reversed the *Drydock* case and the cases in which it had affirmed its holding in that case. The uncertainty of the Board as to a proper solution of the question involved indicates the necessity of a review by the Supreme Court.

4. The Board recognizes the importance of the question.

The Board itself appreciates the importance of the problems involved. On February 28, 1946, Chairman Herzog, of the Board, appeared before the Subcommittee of the Committee on Education and Labor of the United States Senate (79th Cong. 2nd Session) on the Case Bill, H. R. 4908, which amended the Labor Relations Act by excluding supervisors. He told the Committee (page 333 of the Report): "The Packard case, which found the Foreman's Association of America bargained for the Packard foremen, is now on its way through the courts, which will tell us during 1946 whether we were right or wrong in construing the statute as we did * * *. No one could be more aware of the difficult problems which were presented by this issue than are the three members of the Board." It should also be noted that Chairman Herzog in his concurring opinion in the Packard case (R. I, 32) stated that "The issues in this case cannot be analyzed in terms of black and white; they present a study in grey," and that "two reversals in as many years (once in Maryland Drydock case and once in Packard case) are enough" (R. I, 37).

5. The importance of the question is indicated by the action of Congress subsequent to the adoption of the Act.

Following the decision of the Board in the *Collieries* case *(supra)* holding the supervisors could be placed within an appropriate unit, H. R. 2239, excluding supervisors from the Act, was introduced in Congress. Extended hearings were held before the Military Affairs Committee of the House and just as these hearings were concluded, and on May 10, 1943, the Board decided the *Maryland Drydock* case *(supra)* reversing the *Collieries* case. No further action was taken on the bill.

Following the decision of the Board in the present case, the Case Bill, H. R. 4908, was introduced in Congress. This bill expressly amended the National Labor Relations Act by excluding supervisors. Senator Ellander stated that the purpose of the amendment was to clarify the position of the supervisory employee by explicitly setting forth the intent of Congress to exclude persons having *bona fide* supervisory authority from the provisions of the Act (92 Cong. Rec. 5508). The Case Bill was passed by the Senate (92 Cong. Rec. 5847) and thereafter was adopted by the House (92 Cong. Rec. 6036-6057). The Act was subsequently vetoed by the President and returned to the House, and that body again voted in favor of the Act, failing to override the President's veto by a margin of only five votes (92 Con. Rec. 6798, 6801).

6. Cases now pending involving the questions herein presented indicate the desirability of a final ruling by the Supreme Court.

Industry generally is contesting the right of the rank and file unions and so-called independent unions, such as the Foreman's Association, to collectively bargain for the foreman. In the year 1946, the Board among many others decided the following cases involving the same questions here presented: *Jones & Laughlin Steel Corp.*, 66 N. L. R. B., No. 51; *L. A. Young Spring & Wire Corp.*, 65 N. L. R. B., No. 59; *B. F. Goodrich Co.*, 65 N. L. R. B., No. 58; *Midland Steel Products Co.*, 65 N. L. R. B., No. 177; *Kelsey-Hayes Wheel Co.*, 66 N. L. R. B., No. 76; *Baldwin Locomotive Works*, 67 N. L. R. B., No. 168; *Hudson Motor Car Company*, 67 N. L. R. B., No. 52; *Chrysler Motor Car Company*, 69 N. L. R. B. No. 182. Many, if not all, of these cases will reach a Circuit Court of Appeals. A guiding rule should be established by the Supreme Court to avoid confusion and possible conflict of decisions in the Circuit Courts of Appeal.

POINT II

THE GENERAL FOREMEN, FOREMEN, ASSISTANT FOREMEN, AND SPECIAL ASSIGNMENT MEN (HEREIN SOMETIMES COLLECTIVELY CALLED "FOREMEN") ARE NOT EMPLOYEES WITHIN THE MEANING OF THE NATIONAL LABOR RELATIONS ACT

1. The words of the Act are clear and its provisions do not include foremen.

The Act was adopted by Congress in the hope that it could eliminate obstructions to the free flow of commerce caused by strikes and industrial unrest by requiring employers to collectively bargain with employees.

Congress defined an employer as including "*any person acting in the interest of any employer directly or indirectly* * * *." The Act provides that an "'employee' shall include any employee," except certain classes of no importance here.

Collective bargaining does not end with the execution of a labor contract between the employer and the labor union. Collective bargaining continues on a day-to-day basis. The terms and conditions of the labor contract must be interpreted, applied and enforced in connection with situations and grievances which arise from day to day.

The petitioner's contract with the UAW-CIO, the union of the rank and file workers (R. III, 1409-1420) covers rates of pay, transfers, lay offs, rehiring, demotions, discharges, and discipline of the rank and file.

The foremen of the petitioner, as found by the Circuit Court of Appeals, are the "front line of management", (R. III, 2097). They are the first step in the grievance procedure under the UAW-CIO contract (R. III, 1409-1420), and must represent management in solving the grievances

arising out of the application of the provisions of the contract. *They act directly in the interest of the petitioner in carrying out the very purpose of the Act, namely, collective bargaining.*

The Board and the courts have consistently held that foremen act directly in the interest of their employer. They have repeatedly and invariably held that the actions, statements and conduct of the foremen in labor matters are imputed to the employer and make the employer liable under an unfair labor charge under the Act and that the liability of the employer is in no way affected by the fact that the employer did not authorize such action, statements or conduct. *Matter of Tenn Copper Co.*, 9 N. L. R. B. 117; *Matter of Emsco Derrick & Equipment Co.*, 11 N. L. R. B. 79, 87; *Matter of American Steel Scraper Co.*, 29 N. L. R. B. 939, 942; *H. J. Heintz Co. v. N. L. R. B.*, 311 U. S. 514; *International Association of Merchants v. N. L. R. B.*, 311 U. S. 72; *N. L. R. B. v. Marquette Metal Products Co.*, 152 Fed. (2d) 964; *N. L. R. B. v. Link Belt Co.*, 311 U. S. 584, 598.

As stated by Judge Simons in his dissenting opinion in this case (R. 111, 2107):

> "Foremen are employers not only by reason of their duties and responsibilities, but by the inescapable implication of Sec. 152 (2) which classifies as an employer one who is 'acting in the interest of an employer, directly or indirectly.' Sec. 152(3) refers to but does not define 'employee.' The two sections must be read *in pari materia*, and so considered the breadth of the one necessarily limits the ambit of the other."

2. The purposes of the Act clearly indicate that Congress did not intend that foremen should be considered employees.

Congress plainly stated in Section 1 of the Act that the purpose of Congress was to eliminate "strikes and other forms of industrial strife and unrest" that burdened and obstructed commerce. There have not been in the past, and were not at the time the Act was being considered by Congress, any strikes of foremen or management personnel. Congress could only have had in mind the rank and file strikes in the automobile, steel, coal, etc., industries. See Bulletin No. 651, dated August, 1936, issued by the United States Department of Labor, Bureau of Labor Statistics, dealing with strikes in the United States for the years 1880 to 1936. As a matter of fact, it was *seven years* after the Board was organized before it was called upon to decide whether foremen constituted an appropriate unit. See opinion of Board in *Matter of Maryland Drydock (supra)*.

It is clear, therefore, that Congress did not have foremen in mind and did not intend that the Act should cover supervision or any other level of management.

3. The legislative history of the Act clearly indicates that Congress did not intend that foremen should be considered "employees."

Congressional debates (Cong. Rec. Vol. 9, No. 101, Page 7847) in connection with the Act disclosed that Congress was considering means "designed to protect the *laborer*," and Senator Wagner referred to "the making of collective agreements between employers and *workers* without exercising any compulsion upon either side * * *" (p. 7854), and spoke of "An upright, impartial and peaceful forum to industry and *labor* to benefit *employers, workers*, and the

country at large" (p. 7855). Senator Tydings speaks of "workingmen" (p. 7954), and Senator Borah speaks of "a very large body of 'workingmen'" (p. 7955).

See also Hearings before the Committee on Education and Labor, United States Senate, 74th Congress, 1st Session, on S 1958 (1935) U. S. Gov't Printing Office. Senator Wagner's discussion of the Wagner Act, 79th Congressional Record No. 101, p. 7846 *et seq.*, May 15, 1935; Senator Wagner, 79th Congressional Record No. 102, pp. 7949 to 7960, 7967 to 7980, May 6, 1935; Senator Norris, Vol. 79 Congressional Record No. 102, pp. 7949 to 7960, 7967 to 7980.

It is clear, therefore, that Congress had in mind the protection of "labor" and "workingman" and not the protection of highly paid supervisory employees.

4. Related legislation supports the position of petitioner that Congress did not intend that foremen should be considered as "employees."

Subsection (6) of Section 1101 of the Social Security Act (42 U. S. C. A. 1301) provides: "The term 'employee' includes an officer of a corporation." The Court in the case of *Deecy Products Co. v. Welch*, 124 F. (2d) 592, stated that this definition had been used *so that it would be clear that the Act covers superior employees as well as inferior employees.*

The Merchant Marine Act of 1936 (46 U. S. C. A., Section 1251), passed the year following the adoption of the National Labor Relations Act, provides in Section 1253 (c) that the term "employee" means "any person who performs any work, as an employee or subordinate official * * *." Attention is directed to the fact that the Merchant Marine Act expressly provides (Section 1252) that the provisions of the Act shall not in any manner be construed to

limit, affect of repeal the provisions of the National Labor Relations Act, but shall be construed to supplement the latter.

In these statutes dealing with social problems, Congress specifically enlarged the definition of the word "employee." It is only reasonable to assume that if Congress had intended to include foremen or any other level of management within the meaning of the word "employee" in the National Labor Relations Act, it would have evidenced that intent as it did in the Merchant Marine Act, and the Social Security Act.

POINT III

THE FOREMEN OF THE PETITIONER CANNOT PROPERLY BE INCLUDED IN ANY UNIT AND CERTAINLY NOT IN A SINGLE UNIT FOR THE PURPOSE OF COLLECTIVE BARGAINING

Section 9(b) of the Act reads as follows:

> "(b) The Board shall decide in each case whether in order to insure the employees the full benefit of their right of self-organization and to collective bargaining, *and otherwise to effectuate the policies of this* Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof."

Because of the status and the duties and responsibilities of the foremen and for the reasons heretofore set forth even if foremen are held to be employees within the meaning of the Act the Board abused its discretion in holding that they constitute an appropriate unit under the Act.

The foremen are admittedly the "front line of management." They are the agents and representatives of management. The decision in this case will throw the foremen

in the union stream with the very men they supervise and subject them to union pressure and union principals. Management will never know whether the decision of a foreman was dictated by union leanings or pressure or in the interest of management. The Circuit Court of Appeals failed to apply the universal rule of law that an agent will not be allowed to enter into relationships which may conflict with the interests of his principal (*U. S. v. Carter*, 217 U. S. 286; *Michoud v. Girod*, 45 U. S. 503) and by its judgment placed the agents of the petitioner in a position where they will be dominated, pressured and controlled by the union that represents them.

Furthermore, even if foremen could be placed in an appropriate unit, it would be inappropriate to have a single unit consisting of several ranks of supervision where each rank exercised authority over the rank below it. *Matter of Murray Corporation of America*, 47 N. L. R. B. 1003; *Matter of Boeing Aircraft Co.*, 45 N. L. R. B. 630. The Board reversed itself on this matter in the present case. The same Circuit Court of Appeals which decided the instant case held in *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 146 F. (2d) 718, that it was improper for the National Labor Relations Board to certify a rank and file union as the collective bargaining agent of the plant protection men of the steel company. The Court said:

> "When these particular unions were selected as bargaining agents for the plant protection employees, these employees might in an effort to discharge their duty to their employer find themselves in conflict with other members of the union over the enforcement of some rule or regulation they were hired to enforce * * * We think that the imposition of such strains upon personal allegiance and personal interest would undoubtedly be detrimental to the public interest and to the free flow of commerce."

The Court in the instant case also cited with approval the findings of the National War Labor Board that it would not be appropriate for supervisors "who are responsible for discipline, assignment of work, rate adjustments and promotions, who represent the employers in handling grievances of rank and file workers, and who generally represent higher management in dealing with the rank and file workers, to be subject to discipline by the men whom they supervise."

Nevertheless, the Circuit Court of Appeals in the instant case placed 125 general foremen in the same unit with the 643 foremen and 273 assistant foremen who are supervised by them, thus subjecting the general foreman to discipline by the very men they supervise.

CONCLUSION

It is respectfully submitted that the importance of the questions involved to the economy of the country, to the foremen, and to industry are such as to require a full and complete hearing by this Court, and a reversal of the judgment of Circuit Court of Appeals.

LOUIS F. DAHLING,
BODMAN, LONGLEY, BOGLE,
MIDDLETON & ARMSTRONG,
Attorneys for Petitioner, Packard Motor Car Company.

Business Address:
1400 Buhl Building,
Detroit 26, Michigan.

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In the

Supreme Court of the United States

OCTOBER TERM, 1946

No. 658

PACKARD MOTOR CAR COMPANY,
a Michigan corporation,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

BRIEF FOR PETITIONER, PACKARD MOTOR CAR COMPANY

LOUIS F. DAHLING,
(BODMAN, LONGLEY, BOGLE, MIDDLETON & ARMSTRONG),
Attorney for Petitioner,
1400 Buhl Building,
Detroit 26, Michigan.

Interstate Brief & Record Co., Case Bldg., 457 Fort St. W., Detroit 26, Mich.

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On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

---

BRIEF FOR PETITIONER, PACKARD MOTOR CAR COMPANY

I.

OPINIONS BELOW

The opinion of the National Labor Relations Board in the Representation Case is reported in 61 N. L. R. B. 4, and the opinion in the Complaint Case is reported in 64 N. L. R. B. 1212 (R. I 32, III, 1791).

The majority opinion and the dissenting opinion of the Circuit Court of Appeals for the Sixth Circuit are reported in 157 F. (2d) 81-86 and are printed in the record (R. III, 2096-2108). The order of the Circuit Court of Appeals denying the Petition for Rehearing and the dissenting opinion filed in connection therewith are reported in 157 F. (2d) 87, and are printed in the record (R. III, 21, 27).

II.

JURISDICTION

The statutory provisions believed to sustain the jurisdiction of the Court in this case are:

(a). Section 10(e) of the National Labor Relations Act (49 Stat. 409, 29 U. S. C., Sec. 151), which provides that the decree of the Circuit Court of Appeals entered upon a petition for enforcement shall be final "except that the same shall be subject to review * * * by the Supreme Court of the United States and upon writ of certiorari or certification as provided in Sections 239 and 240 of the Judicial Code, as amended (28 U. S. C., Secs. 346 and 347.)".

(b) Section 240 of the Judicial Code, as amended (28 U. S. C., Sec. 347).

The final judgment was entered in this cause by the United States Circuit Court of Appeals for the Sixth Circuit on August 12, 1946 (R. III, 2095), and the petition for rehearing, filed by the petitioner herein, was denied by that Court on September 30, 1946 (R. III, 2127).

The petition for writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit and brief in support thereof was filed October 28, 1946, and an order was entered by the Supreme Court of the United States on December 9, 1946, granting the petition.

III.

STATEMENT OF CASE

This case involves the construction and interpretation of the National Labor Relations Act and its application to the foreman level of management of the petitioner.

On October 19, 1944, the Foreman's Association of America (hereinafter called the "FAA"), an alleged unaffiliated labor organization, filed a Petition for Certification of Representatives, covering the foreman level of management of the petitioner, with the National Labor Relations Board (R. I, 44; II, 1299). The matter came on for hearing, and the Board, after denying petitioner's motion to dismiss the petition on the grounds that the foreman level of management of the petitioner were not employees under the Act and would not constitute an appropriate unit under the Act (II, 787), ruled, one member dissenting, that all of the personnel in the foreman level of management of the petitioner at Detroit, Michigan, were employees under the Act; that they constituted a unit appropriate for the purpose of collective bargaining under Section 9(b) of the Act, and directed that an election be held to determine whether the foremen comprising the unit wished to be represented by the F. A. A. (R. III, 1795, 1820, 1821). The election resulted in 666 votes being cast in favor of the Association, 435 votes against it, and 155 challenged votes which were not counted. The Board on April 18, 1945, certified the F. A. A. as the exclusive bargaining representative of the foreman unit (R. III, 1836-1837).

Petitioner refused to recognize the certification, and the Board filed its complaint alleging that the petitioner was guilty of unfair labor practices within the meaning of Section 8(1)(5) and Section 2(6)(7) of the Act, and after

a hearing thereon, entered an order directing the petitioner to cease and desist from refusing to collectively bargain with the Foreman's Association (R. I, 30; III, 1782). Thereafter, the Board, pursuant to Section 10(e) of the Act, filed a petition with the Circuit Court of Appeals for the Sixth Circuit for enforcement of its order (R. I, 1-4). As noted above, the Circuit Court of Appeals after hearing (and with one Justice dissenting) entered its final judgment enforcing the order of the Board on August 12, 1946 (R. III, 2095), and on September 30, 1945 (one Justice dissenting) denied the Petitioner's petition for rehearing (R. III, 2127).

The petitioner is a Michigan corporation organized in 1905 and carrying on its business for the purpose of this case in the City of Detroit, Michigan. The normal business of the petitioner is the manufacture and sale of automobiles, but its business at the time of the proceedings before the National Labor Relations Board in this case was the manufacture of war materials.

Petitioner has approximately 32,000 rank and file employees (R. III, 1815), who since 1937 have been represented by the United Automobile Workers of America, affiliated with the Congress of Industrial Organizations, hereinafter referred to as the "UAW-CIO" (R. III, 1409-1420; R. I, 403).

The manufacturing operations of the petitioner are broken down into two main divisions, which are in turn divided into approximately twenty smaller divisions, which in turn are subdivided into approximately 300 departments. Exhibits 22, 22A-22J, 23 A-23 I (R. II, 802-807; R. III, 1479-1498).

To directly supervise the manufacturing operations and activities of the rank and file workers, petitioner employs

approximately 125 general foremen, 643 foremen, 273 assistant foremen, and 65 special assignment men, who have the qualifications of foremen and who are used to replace and substitute for foremen and to work on special assignments (R. II, 801; R. III, 1817). These supervisors will sometimes be hereinafter refefred to as the "foreman level of management." The petitioner almost invariably selects its assistant foremen from the rank and file employees; its foremen from the ranks of assistant foremen; and its general foremen from the ranks of the foremen (R. II, 812, 813). The foreman level of management is in turn supervised by the higher levels of management, consisting of the president of the corporation; two vice-presidents; seven superintendents and managers of plants; 16 managers of divisions; 32 assistant managers of divisions; and 20 superintendents of divisions. Exhibits 22, 22 A-22 J, 23 A-23 J (R. II, 802-807; R. III, 1479-1498).

The different levels of management shown by the exhibits referred to above are as follows:

Title	Number
President	1
Executive Vice President	1
Vice President of Engineering	1
Manager of Aircraft Engine Plant	1
Assistant Manager of Aircraft Engine Plant	1
Night Superintendent Aircraft Engine Plant	1
Asst. Superintendent Aircraft Engine Plant	1
Manager of Car and Marine Engine Plant	1
Executive Assistant Car and Marine Engine Plant	1
Managers of Divisions (Includes Master Mechanic—Plant Engineer—Chief Inspector)	16
Assistant Managers of Divisions (Includes Assistant Master Mechanic — Assistant Plant Engineer—Assistant Inspectors)	32

Superintendent of Divisions (Some Superintendents as shown by the Charts have the same jurisdiction as Managers of Assistant Managers)	20
General Foremen	125
Foremen	643
Assistant Foremen	273
Special Assignment Men	65

The general foremen in some cases have charge of a single department; in other instances, they are in charge of as many as four departments (R. III, 1815; II, 802-803; III, 1884; I, 331-332, 433-435, 499). Where the general foreman is in charge of more than one department, a foreman or assistant foreman is usually in charge of each of such departments under the supervision of the general foremen (R. I, 448; R. II, 802-807; III, 1479-1498, 1816). When the general foreman is in charge of a single department, the foreman and assistant foremen under him either supervise the work of parts of the department, such as sub-assembly lines, or act as his aids in connection with the work of the entire department (R. I, 514, 287-288, 498, 656-657; II, 802-807; III, 1479-1498).

The foremen are a highly-paid group (R. II, 813; III, 1816, 1817), and with the exception of a very few assistant foremen are paid a monthly salary based on a 40-hour week (R. I, 373, 514, 515-516; II, 813-814; III, 1816), and receive additional payment for overtime (R. II, 815-820; III, 1816). The salary range for general foremen is from $280 to $375 per month; for foremen, from $220 to $370 per month; and for assistant foremen, from $220 to $315 per month, depending upon the type of work done and the department in which the foreman acts as supervisor (R. I, 421-422, 480-481; II, 814; III, 1816). General foremen with overtime pay receive approximately $500 per month; foremen, approximately $450 per month; and assistant foremen, approximately $400 per month.

The foremen in other respects besides compensation are treated by the petitioner as a group apart. Unlike ordinary employees, foremen are paid for justifiable absences and for holidays; they are not docked for reporting to work late, and do no manual work. They receive longer paid vacations and are given severance pay upon release by the Company (R. I, 516; II, 822-825; III, 1506-1510, 1817-1818).

The general foremen instruct and supervise the work of the foremen and assistant foremen under them and recommend changes in their terms and conditions of employment, such as rates of pay, transfer, pay-off, promotion, discharge or discipline (R. I, 301-302, 332-334, 517, 523-526, 564-565, 584-596, 610; III, 1816). These recommendations (as found by the Circuit Court of Appeals) are usually followed (R. III, 2097, 1466, 1467; I, 337, 338-340, 346, 365, 611).

The foremen and assistant foremen make like recommendations, which are usually followed, concerning the pay, discharge, demotion, discipline, etc., of the workers under them (R. I, 534; III, 2097).

The foremen are responsible for maintaining quantity and quality of production (R. I, 299, 311, 331-332, 513-514, 603; II, 713-714; III, 1799, 1816). While the rank and file workers are hired through the employment department in the first instance, it is the duty of the foremen to send in recommendations for men needed by him (R. I, 310, 353); and if a worker does not meet the requirements to send him back to the employment office (R. I, 315).

The foremen are in charge of the first step in the grievance procedure provided for in the contract between the petitioner and the UAW-CIO, the union which repre-

sents the rank and file workers (R. III, 1409, 1410; I, 403). If a worker thinks he has a grievance, it is first discussed by the foremen with the chief steward of the union, and an attempt is made to settle the difficulty (R. I, 530). Most grievances are settled at the first stage by the foremen (R. I, 559-560, 616). Many of the grievances are trivial, but if not taken care of would become of major importance; by adjusting little grievances, large ones are avoided (R. I, 642).

The petitioner has conducted a school for foremen for a number of years. At this school classes are conducted on a conference basis in which the foremen participate and their problems are discussed (R. I, 374-383, 419, 512, 517-518; II, 825-827; III, 1817, 1819).

Foremen must set a good example, must show interest in the workers, develop team work among their workers, show appreciation for their efforts, and maintain uniform discipline standards (R. II, 953).

A foreman must be a good leader, be able to get along with the workers, have good judgment, use common sense, be level headed, even tempered, and impartial (R. I, 522, 528; II, 953-954).

The functions and responsibility of foremen in connection with the manufacture of automobiles commence with the development of a new model (R. II, 902-903). The foremen are consulted in connection with the methods to be used in manufacturing the various parts (R. II, 709, 902, 966, 1004), the tools to be used and processes to be followed (R. II, 904). It is the responsibility of the foremen to set up their departments for operations (R. II, 907), to request trial runs on materials (R. II, 908, 1002), supervise tests of materials (R. II, 941), and make recommendations in connection therewith, the majority of which are approved (R. II, 1002).

The Board in the instant case attempted to differentiate between the foremen of the 1900s and the foremen of today. The lower court, after finding that the duties, powers and responsibilties of the foremen of petitioner were substantially as set forth above, had this to say on the question of their present status as compared with their status in the early years of this century:

> "* * * In an exhaustive report filed January 19, 1945, made by a panel of distinguished economists established by the National War Labor Board to deal with disputes in major automobile and shipping industries involving supervisors, including that between Packard and certain of its foremen, the panel recognized that for a long time the responsibilities and authority of the foreman had been undergoing a slow change, resulting in a drop in his authority and in his responsibility for making policies, and a rise in the foreman's responsibility for executing policies. However, the panel concluded:
>
> > 'These trends do not mean that the foreman's job is becoming less exacting or that it can be filled by less competent people. On the contrary, the need for able men in the posts of foremen seems to be growing. The foreman may be given more and more ready-made policies to execute, more and more standard practices to observe in executing them, and more and more help from a variety of service departments, but he is also held to higher and higher standards in meeting production schedules, in maintaining standards of quality, and in dealing with personnel. Furthermore, higher management cannot escape dependence upon the foreman's knowledge of men and conditions and upon the wisdom and fairness of the foreman's judgment. On many matters the foreman may only recommend action, but his recommendations must usually be accepted by superiors who know too little about the circum-

> stances of specific cases to reject the foreman's recommendation. Hence no matter how well conceived the company's production and labor policies may be at the top, they are in fact no better than they become at the hands of the foremen who execute them.' "

The full report of the National War Labor Board Panel was admitted in evidence and appears in the record as Board's Exhibit 19, C. case (R. III, 1851-2082).

The lower court specifically found that: "The foremen are the front line of management," (R. III, 2097), and

> "'*The foreman plainly acts in the interest of management.* As succinctly stated in Bulletin 66 of the United States Department of Labor, Division of Labor Standards, 'The foreman is the operative executive of management * * *, the official contact for workers and shop stewards * * *, the department executive. * * *' This same bulletin states, *and under this record the statement is correct,* 'It goes without saying that the foreman's primary responsibility is to protect the interests and rights of management.' " (R. III, 2102-2103.)

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* Emphasis added unless otherwise indicated.

IV.

ASSIGNMENT OF ERRORS

1. The Circuit Court of Appeals erred in holding that the petitioner's general foremen, foremen, assistant foremen, and special assignment men were "employees" within the meaning of the National Labor Relations Act.

2. The Circuit Court of Appeals, after holding that the general foremen, foremen, and special assignment men of the petitioner were "employees" within the meaning of the National Labor Relations Act, erred in holding that the Board could properly include such "employees" in any unit for the purpose of collective bargaining.

3. The Circuit Court of Appeals, after holding that the petitioner's general foremen, foremen, assistant foremen, and special assignment men were "employees" within the meaning of the Act and could be placed in an appropriate unit, erred in holding that the Board could properly include such "employees" in a single unit for the purposes of collective bargaining.

V.

SUMMARY OF ARGUMENT

POINT I

The general foremen, foremen, assistant foremen, and special assignment men are not "employees" within the meaning of the National Labor Relations Act, and therefore the Board was without jurisdiction in this case. The Act was adopted by Congress in the hope that obstructions to the free flow of commerce caused by strikes and industrial unrest could be eliminated by requiring employers to bargain collectively with their employees. Congress defined an "employer" as including "*any person acting in the interest of any employer, directly or indirectly* * * *" The Act does not define "employee," but provides that "an 'employee' shall include any 'employee'," except certain specifically excluded classes of no importance here.

Thus Congress first defined an "employer" as including any person acting in the interest of the employer, directly or indirectly. Then followed the statement with respect to an "employee." By so expressing itself, Congress necessarily excluded from the second classification the class which it had already defined and limited.

The foremen of the petitioner act directly in the interest of the petitioner, as was found by the Circuit Court of Appeals in this case. Furthermore, the courts and the Board have invariably held that the acts or omissions of foremen will be imputed to the employer solely by virtue of the relationship, and even though the Company officers were unaware of the activities of the foremen and did nothing to encourage them, and therefore such foremen are held to act directly for their employer in connection with the very subject matter of the Act. Congress, as

noted above, sought to cure labor unrest by requiring collective bargaining. Collective bargaining does not end with the execution of the contract with the labor union representing the rank and file; it continues on a day-to-day basis. The petitioner's contract with the CIO covering the rank and file workers deals with rates of pay, transfers, lay-offs, rehiring, demotions, discharges and discipline of the rank and file. The foremen of the petitioner are the first step in the grievance procedure under the contract and are the point of contact between management and such workers. They must represent the petitioner in solving the grievances and questions arising out of the applications of the provisions of the contract to the rank and file. They thus act directly in the interest of the petitioner in carrying out the very purpose of the Act, namely, collective bargaining.

Furthermore, the purpose of the Act, as expressed by Congress, is to prevent strikes and labor unrest. There is no evidence that prior to the adoption of the Act there had been strikes of supervisors. The strikes and labor unrest that Congress had in mind related to the rank and file employees. See U. S. Department of Labor Bulletin No. 651, dated August, 1937.

The Act constantly refers to "wages," "wage earners," "wage rates," and "workers." The Act itself is called the "National *Labor* Relations Act." It is evident, therefore, that Congress had in mind the rank and file worker, and not any part of the managerial structure of industry.

Legislative history of the Act indicates that Congress did not intend that foremen should be considered "employees," and in the Congressional debates, there is no mention made of supervision. Constant reference, however, is made to "wages," "hours," "workers," "labor" and "working men." See 79th Congressional Record No.

101, p. 7846 *et seq.*, No. 102, pp. 7949 to 7960, 7967 to 7980. It is clear that the dominant purpose in the minds of proponents of the National Labor Relations Act was to enact legislation by which the "laborers," "wage earners" and "workers" might gain collective bargaining rights, and that it was not intended that supervisory employees were to come within the provisions of the Act.

Related legislation supports the position taken by the petitioner. In the Merchant Marine Act of 1936 (46 U. S. C. 1251), the word "employee" is defined as meaning "any person who performs any work as an employee or *subordinate official* * * *" Subsection 6 of Section 1101 of the Social Security Act (42 U. S. C. 1301) provides: "The term 'employee' includes an officer of the corporation." It is only reasonable to assume that if Congress had intended to include foremen within the term "employee" in the National Labor Relations Act, it would have evidenced that intent.

The action of Congress in adopting the Case Bill (later vetoed by the President), which provided that no supervisory employee should have the status of an "employee" for the purposes of Sections 7, 8 and 9 of the National Labor Relations Act, and the debates in connection with the Case Bill on this matter clearly indicate that it was never the intention of Congress to include supervisors under the coverage of the National Labor Relations Act.

Congress must be presumed to have enacted the Act having in mind the universal rule that an agent will not be allowed to enter into a relationship which may conflict with the interests of the principal. The foremen are the agents and representatives of the petitioner and should not be permitted to subject themselves to the influence, pressure or control of a union whose principles,

as hereinafter set forth, would be contrary to the interests of the petitioner.

A construction of the Act which would include supervisory employees within its coverage would lead to unreasonable and intolerable results and would be contrary to the public interest, the interest of the rank and file employees, the supervisors and the employers for the reasons set forth under Point II.

POINT II

If the foremen of the petitioner are "employees" within the meaning of the Act, then the Board assuming it had jurisdiction so to do, erred in including these foremen in any unit for the purpose of collective bargaining. Because of the uncertainty of the Board on this question, the fact that its own members cannot agree and that the Board apparently is not too convinced of the correctness of its own statements, the Court should, as invited to do by Chairman Herzog when he appeared before the Committee on the Case Bill, examine into the Board's findings and determinations in this matter and not feel constrained to accept such findings and determinations because of any presumed specialized experience or expert knowledge on the part of the Board.

The members of the Board in the various opinions given in connection with this issue have pointed out very clearly that the establishment of units of foremen, even in separate bargaining unit, would bring about organizational rivalry; would impinge upon the right of the rank and file under the Act, and would place the employer in an impossible position because the employer is responsible for the interference by his supervisors with rank and file organizational activity, and would do damage to the delicate

balance between the interests of management and worker which the Act sought to solve.

Forced collective bargaining with a unit of foremen would result in the application of the so-called union principles to a part of management, and the result would be against the public interest and the policy of the Act. The ranks of management would be split, divided loyalty would result, management could not rely on the foreman to properly enforce discipline or to carry on his duties because management would never know whether decisions made were in the interest of the Company or because of union pressure. The status of the foreman would have to be reduced. The foremen could no longer be management's representatives in grievance procedures because this responsibility would have to be given to someone whose undivided loyalty was solely to management. The union leaders would enforce the so-called majority rule and force foremen to strike even against their own wishes and better judgment. It would result in the application of the union rule of promotion by seniority rather than by merit. Management to effectively manage must be left to determine for itself the appropriate weight to be assigned to merit, ability and seniority in connection with the laying off, demoting, promoting or transferring of supervisory employees, and if it does not have this right, the effect upon the quality of management and the efficiency of American industry would be unfortunate, if not disastrous. The effect on the rank and file would likewise be highly undesirable.

In the event the Court should determine, as now claimed by the Board, that it must place a person who is an employee under the Act in some unit for the purpose of collective bargaining, then the reasons stated above demonstrate that Congress could never have intended to include supervisors as employees under the Act.

POINT III

Even though the foremen of the petitioner are employees under the Act and must be placed in an appropriate collective bargaining unit, which the petitioner, of course, does not admit, the Board abused its discretion in placing all four classes of supervisors in the same unit. By its action, the Board placed 125 general foremen of the petitioner in the same unit with approximately 1,000 foremen and assistant foremen, thus regimenting the general foremen in a unit with the very men over whom the general foremen have for all practical purposes power to promote, demote, discipline and discharge. Under these conditions, where the general foremen would be outvoted 10 to 1, it goes without saying that not only would a conscientious foreman be eliminated, but the whole function of foremen as a part of supervision would cease to exist. They would find themselves in conflict with other members of the union over the exercise of their responsibilities and duties. The "imposition of such strains upon personal allegiance and personal interest would undoubtedly be detrimental to the public interest and to the free flow of commerce."

VI.

ARGUMENT

POINT I

THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT THE PETITIONER'S GENERAL FOREMEN, FOREMEN, ASSISTANT FOREMEN, AND SPECIAL ASSIGNMENT MEN WERE "EMPLOYEES" WITHIN THE MEANING OF THE NATIONAL LABOR RELATIONS ACT

A. THE CONSTRUCTION PLACED UPON THE ACT BY THE BOARD AND BY THE LOWER COURT IS NOT BINDING UPON THIS COURT.

It is the position of the petitioner that the Board is without jurisdiction in this case and that the Act does not apply and was never intended to apply to the foreman level of management because such a construction, interpretation and application would be contrary to the wording, the purpose, and the spirit of the Act.

The construction of the Act by the Board is not binding upon the Court. Questions of statutory interpretation are for the courts to resolve, giving appropriate weight to the judgment of those who have a duty to administer the law. *Western Union Telegraph Co. v. Lenroot*, 65 S. Ct. 335; *N. L. R. B. v. Hearst Publications*, 322 U. S. 111.

B. THE LANGUAGE OF THE ACT IS CLEAR AND UNAMBIGUOUS AND ITS PROVISIONS DO NOT INCLUDE SUPERVISION.

In Section 1 of the Act, Congress found that experience had proved that the protection by law of the right of employees to organize and bargain collectively promoted the flow of commerce by removing certain recognized sources of industrial strife and unrest, and by restoring equality of bargaining power between employers and employees.

The collective bargaining must, of course, be between the employer and the employee. Mass industry is conducted through corporate organizations. These "legal owners" are artificial persons and can only act through representatives and agents. Congress had this in mind when the Act was adopted, and it therefore became necessary for Congress to define the term "employer." This Congress did in Section 2 of the Act which reads in part as follows:

> "Section 2. * * *
>
> (2) The term 'employer' includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.
>
> (3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equiva-

> lent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse."

In common parlance, of course, every person who performs services for the petitioner in this case is an employee. The President is an employee—so are the Vice-Presidents, the foremen, and the rank and file worker. It does not follow, however, that the Presidents or the Vice-Presidents, or foremen are employees within the meaning of the Act. The Court in *N. L. R. B. v. Hearst Publications, Inc.*, 322 U. S. 111, 129, in discussing the word "employee" in the Act said: "That term, like other provisions, must be understood with reference to the purpose of the Act and the facts involved in the economic relationship."

Section 2 of the Act, quoted above, sets forth two classifications: the first is the "employer," which includes *any* person acting in the interest of an "employer."

It is only after placing supervision within the term "employer" that Congress proceeds to consider the second of the two classifications, to-wit, "the employee." As stated by Judge Simons in his dissenting opinion in this case:

> "The two sections must be read *in paria materia*, and so considered, the breadth of the one necessarily limits the ambit of the other" (R. III, 2108).

The foremen of the petitioner act directly in the interest of the petitioner. The Circuit Court of Appeals in this case found that: "The foremen (at Packard) are the front line of management" (157 F. (2d) 80, 81) (R. III, 2097). The Court further said (p. 84) (R. III, 2102-2105):

> "The foreman plainly acts in the interest of management. As succinctly stated in Bulletin 66 of the U. S. Department of Labor, Division of Labor Standards, 'The foreman is the operative executive of management * * *, the official contact for workers and shop stewards * * *, the department executive * * *' The same Bulletin states, and *under this record the statement is correct*, 'It goes without saying that the foreman's primary responsibility is to protect the interests and rights of management.'"

Furthermore the Board and the courts heretofore have passed upon what will be considered an unfair labor practice by an "employer" within the meaning of Section 8 of the Act. There are many decisions which in substance hold that foremen are really the "employer" in such a case, and that their acts and omissions are imputed to the employer solely by virtue of the relationship, and even though the Company officers were unaware of the activities of the foremen and did nothing to encourage them.

This court had the question before it in the case of *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514.

The Court found in the above case that a general foreman was active in disparaging the union; that the foremen were active in soliciting employees to join an independent union called the "Association." The Court assumed that the Company officers were unaware of the activities of the supervisory staff, and did nothing to encourage them. The Court further found that foremen had authority to recommend employment, discharge, and wage increases. The Court also found that were was evidence supporting the Board's conclusion that the "employees regarded the foremen and group leaders as representatives of the Company" and that a number of employees signed as members of the Association "only because of the fear of their jobs or of

discrimination by the employer induced by the activities of the foremen and group leaders." The Court then held that there was an adequate basis for the Board's order prohibiting "petitioner, its officers and agents from interfering with the exercise of its employees' rights of self organization or with the administration of the Association or contributing to its support."

To the same effect see:

N. L. R. B. v. Link-Belt Co., (1941), 311 U. S. 584; *N. L. R. B. v. American Mfg. Co.*, 106 F. (2d) 61; *N. L. R. B. v. Chicago Apparatus Co.*, 116 F. (2d) 753; *New Idea Inc. v. N. L. R. B.* (1941), 117 F. (2d) 517; *N. L. R. B. v. Faultless C. Corp.* (1943), 135 F. (2d) 559; *N. L. R. B. v. Security Warehouse & Cold Storage Co.*, 136 F. (2d) 829; *N. L. R. B. v. Fitzpatrick & Weller* (1943), 138 F. (2d) 697; *N. L. R. B. v. Brewer Tanning Co.* (1944), 141 F. (2d) 62; *N. L. R. B. v. Engineering & Research Corp.*, 65 S. Ct. 560.

Furthermore, the foremen of the petitioner act directly in the interest of the petitioner in carrying out the major purpose of the Act, to-wit, collective bargaining. Collective bargaining does not end with the execution of the contract between the employer and the labor union representing the rank and file. Collective bargaining continues on a day-to-day basis. The terms and conditions of the labor contract must be interpreted, applied and enforced in connection with situations and grievances which arise from day to day. The petitioner's contract with the CIO, the union of the petitioner's rank and file workers (R. III, 1409-1420), covers rates of pay, transfers, lay-offs, rehiring, demotions, discharges and discipline of the rank and file. The foremen of the petitioner are the first step in the grievance procedure under the CIO contract (R. III, 1409, 1410-1411) and must represent the petitioner in solv-

ing the grievances arising out of the application of the provisions of the contract. *They act directly in the interest of the petitioner in carrying out the very purpose of the Act, namely, collective bargaining.*

The exclusions in subsection (3) of Section 2 of the Act support the position of petitioner. Among the exclusions, is "any individual employed as an agricultural laborer." If "employee" includes supervision, and inasmuch as only agricultural *laborers* are excluded from the "*employee*" classification, it would follow that agricultural supervisors are within the Act. This would mean that the Act covered agricultural supervisors and not agricultural laborers, and such a construction would be absurd. The answer must be that the Act does not and was never intended to cover or include any supervision.

Furthermore, it is apparent that the word "employee" in subsection (3) was not intended as including all those who are in the employ of another. Hundreds of thousands of persons employed by others, to-wit: "employees of the United States," the States and political subdivisions thereof, employees of railroads subject to the Railway Labor Act, and labor organizations, agricultural laborers, domestic servants and those employed by their parents or spouse are specifically eliminated by the language of the Act.

The first section of the Act is entitled "Findings and Policy." It will be noted that wherever the term "employee" appears in this Section 1, it is found in conjunction with the terms "wages," "wage earners," "wage rates" and "workers."

Thus Congress stated in its findings and policy that it was concerned solely with "wage earners." That class does not ordinarily include supervisors whose take-home salaries, as found by the lower court, run as high as $500.00 per month (R. 111, 207). Congress used these

words to express their common and accepted meaning. Webster's New International Dictionary defines "worker" as "a laborer; a toiler." Century Dictionary states that: "*Wages* and *hire* are for the more menial, manual or mechanical form of work and commonly imply employment for short periods, as a day or week; *salary* and *stipend* are for more mental forms and imply greater permanence of employment and payment at longer intervals: the *wages* of a servant or laborer; the *salary* of a postmaster or a teacher," and further that, "In common use, the word '*wages*' is applied specifically to the payment made for manual labor or other labor of a manual or mechanical kind."

The position taken by the petitioner is supported by the provisions of Section 9(a) of the Act, where Congress again plainly states that the protection of the Act is for those earning "rates of pay and wages." This subsection reads:

> "Representatives designated or selected for the purpose of collectively bargaining * * * shall be the exclusive representatives * * * for the purpose of collective bargaining with respect to *rates of pay, wages,* hours of employment, or other conditions of employment."

Subsection (5) of Section 2 of the Act in defining "labor organization," states that the term means any organization, etc., in which employees participate, and which exists "for the purpose of dealing with employers concerning grievances, labor disputes, *wages, rates of pay,* hours of employment or conditions of pay."

When Congress in this section used this language in conjunction with the word "employee," it was referring to the rank and file employees because Congress well knew that supervisors are usually salaried persons and that their

salaries are not subject to deduction as is the pay of the "workers" and "wage-earners."

It is pertinent to note that when the word "salary" is used in the Act, it is with reference to the members of the Board (Sec. 4).

It is submitted therefore that the language of the Act is clear and unambiguous and that as applied to the facts in this case, the foremen of the petitioner are not "employees" within the meaning of the Act.

C. IN THE EVENT THERE IS ANY UNCERTAINTY OR DOUBT AS TO WHETHER SUPERVISORS ARE "EMPLOYEES" UNDER THE LANGUAGE USED IN THE ACT, THE INTENTION OF CONGRESS, DETERMINED BY THE APPLICATION OF WELL ESTABLISHED RULES OF CONSTRUCTION, CLEARLY DEMONSTRATES THAT CONGRESS DID NOT INTEND THAT SUPERVISORS WERE TO BE CONSIDERED "EMPLOYEES" UNDER THE ACT.

1. Applicable Rules of Construction

The primary and controlling rule of construction is that the intention of Congress controls. *Re N. L. R. B.*, 304 U. S. 486, 494; *N. L. R. B. v. Fansteel Metallurgical Corp.*, 306 U. S. 240, 255; *N. L. R. B. v. Waterman S. S. Co.*, 309 U. S. 206, 208, 212; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261.

As stated in *U. S. v. Stewart*, 311 U. S. 60, 69:

> "The meaning of every phrase must be closely related to the time and circumstances of its use."

In *Platt v. Union Pacific R. R. Co.*, 99 U. S. 48, 64, the Court said:

> "* * * in endeavoring to ascertain what the Congress of 1872 intended, we must, as far as possible,

> place ourselves in the light that Congress enjoyed, look at things as they appeared to it, and discover its purpose from the language used in connection with the attending circumstances."

Furthermore, words of a statute should not be so broadly construed that the results will be absurd and unreasonable, because it will not be presumed that the legislative body had any such intention.

It is submitted, therefore, that the construction of the Act, which would include supervision as "employees" is improper because, as the Board said on page 738 of its opinion in the *Maryland Drydock Co.* case, 49 N. L. R. B. 733:

> "* * * The Board would then have to hold in each case that the highest corporate officials, including even presidents and general managers, were entitled to be included in appropriate collective bargaining units, since everyone associated with a corporation, except the stockholders and the board of directors, is an employee. Such a construction of the Act ignores the fact that it was passed against a background of an industrial society in which the vast majority of business enterprises are conducted in the corporate form. While the maxim *inclusio unis est exclusio alterius* is a well established canon of statutory construction, the courts have recognized its limitation, where its application leads to results so absurd as to make it unreasonable to believe that they were intended by Congress."

In *Church of the Holy Trinity v. U. S.*, 143 U. S. 457, the Court was called upon to construe an act of Congress which made it "unlawful for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States

* * * under contract or agreement * * * to perform labor or service of any kind * * *" (p. 458). One of the sections of the Act excluded certain classifications from the operation of the Act but not a rector or pastor of a church. The Church made a contract with an alien to bring him into the United States and employ him as its pastor and rector. An action was started to recover the penalty provided in the statute. In holding that the statute was not applicable, the Court said in part (p. 458):

> "It must be conceded that the act of the corporation is within the letter of this section, for the relation of rector to his church is one of service, and implies labor on the one side with compensation on the other. Not only are the general words labor and service both used, but also, as it were to guard against any narrow interpretation and emphasize a breadth of meaning, to them is added 'of any kind;' and, further, as noticed by the Circuit Judge in his opinion, the fifth section, which makes specific exceptions, among them professional actors, artists, lecturers, singers and domestic servants, strengthens the idea that every other kind of labor and service was intended to be reached by the first section. While there is great force to this reasoning, we cannot think Congress intended to denounce with penalties a transaction like that in the present case. It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, because not within its spirit, nor within the intention of its makers. This has been often asserted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words,

makes it unreasonable to believe that the legislator intended to include the particular act."

In *Apex Hosiery Co. v. Leader*, 310 U. S. 469, the Sherman Anti-Trust Act (15 U. S. C. A. 1) was involved, Sec. 1 of which provides that "Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal." Regardless of the word "every" in the statute, the Court said the statute was not applicable to acts of a union and its officers in calling and maintaining a strike to enforce union demands. A contrary holding, the Court said, would mean that "practically every strike in modern history would be brought within the jurisdiction of the federal courts, under the Sherman Act, to remedy law violations" (p. 513), and that it would not give the statute such a ridiculous construction.

In *U. S. v. American Trucking Association.*, 310 U. S. 534, the Court was required to construe the word "employees" in connection with the power of the Interstate Commerce Commission under the Motor Carriers Act of 1935 (49 U. S. C. A. 301). The question was whether the word "employees" used in the Act without qualification, applied to all of the employees of a carrier or only to those employees whose duties affected safety of operation. The Court said its function was "to construe the language so as to give effect to the intent of Congress" (p. 542); that "Obviously there is danger that the courts' conclusion as to legislative purpose will be unconsciously influenced by the judges' own views or by factors not considered by the enacting body" (p. 544); and that this must be carefully guarded against; that "it cannot be said that the word 'employee' as used in Section 204 (a) is so clear as to the workmen it embraces that we would accept its broadest

meaning" (p. 545); that "We are especially hesitant to conclude that Congress intended to grant the Commission other than the customary power to secure safety in view of the absence in the legislative history of the Act of any discussion of the desirability of giving the Commission broad and unusual powers over all employees" (pp. 546, 457); and the "Our conclusion, in view of the circumstances set out in this opinion, is that the meaning of employees in Sec. 204 (a) (1) and (2) is limited to those employees whose activities affect the safety of operation" (p. 553).

2. The Preamble of the Act (Section 1) Discloses that Congress did not intend to include Supervision.

The preamble of a statute is said to be the key which opens the minds of the makers of the law. *Coosaw Mining Co. v. South Carolina*, 144 U. S. 550.

Congress found in the first paragraph of Section 1 that the denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining "lead to strikes and other forms of industrial strife or unrest which have the necessary effect of burdening or obstructing commerce * * *" by, among other things, "causing diminution of employment and *wages* * * *."

Congress has plainly stated in Section 1 that it was attempting to remedy a situation which existed in the past and was then existing. This situation dealt with "strikes and other forms of industrial strife and unrest" that burdened and obstructed commerce. There had not been in the past and were not at the time the Act was being considered any strikes of foremen, superintendents, plant managers, general managers or officers of the various com-

panies. Congress could only have had in mind the automobile strikes, steel strikes, coal strikes, etc., of the rank and file workers.

Bulletin No. 651, dated August, 1937, issued by the United States Department of Labor, Bureau of Labor Statistics, in dealing with strikes in the United States from the years 1880 to 1936 makes no mention of strikes by supervisors and discloses that strikes prior to 1935 were by the rank and file workers. It is these strikes which Congress had in mind when the Act was adopted in 1935.

It is evident, therefore, that Congress did not intend to include supervision within the provisions of the Act.

In the first sentence of Section 1, Congress finds that "The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining led to strikes * * *." Foremen had not been asking for recognition when Congress was considering the Act.

It is interesting to note that the Board admits in its opinion *In re Maryland Drydock Co.*, 49 N. L. R. B. 733, that:

> "The legislative history of the National Labor Relations Act indicates that the conditions which prevailed in the mass industries were primarily factors which led to its enactment. In those industries, it was traditionally recognized by all parties that the interests of the foremen lay predominantly with the management groups."

It is also very pertinent to note that in the same opinion, on page 737, the Board states that it was not until the *seventh year of its existence* that it was called upon to decide whether a unit consisting of supervisors was an appropriate unit under the Act.

It is clear from the foregoing that Congress did not have supervision in mind and did not intend that the Act should cover supervision or any other level of management."

3. Subsequent legislative action supports the position taken by the petitioner.

The interpretation of a statute by the legislative department of the government may go far to remove doubt as to its meaning. *First National Bank v. Missouri,* 263 U. S. 640. The amendment or re-enactment of an Act may be resorted to for the discovery of the legislative intent. *Luckenbach S. S. Co. v. United States,* 280 U. S. 173. "Indeed, it has been held that if it can be gathered from a subsequent statute *in pari materi* what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute." *50 A. Jur. Statutes,* Sec. 377; *Farmers and Mechanics National Bank v. Dearing,* 91 U. S. 29.

In May of 1946 Congress had before it the so called Case Bill (H. R. 4908). This bill expressly amended the National Labor Relations Act by excluding supervisory employees. In introducing the amendment to exclude such supervisors, Senator Ellender stated: (92 Cong. Rec. 5805)

> "Its purpose is to *clarify* the position of the *supervisory employee under the National Labor Act* by explicitly setting forth the intent of Congress to exclude persons vested with *bona fide* supervisory authority from its provisions."

Senator Ellender referred to the decisions of the Board, and stated:

> "The result of this latest decision (*in re: Jones Laughlin Steel Corporation*) is that we are now confronted with the anomalous situation of having a Federal Statute which was enacted primarily for the benefit of the workers being construed so as to permit unions which already represent the workers to become also the legal representatives of the very men whom management has hired to supervise rank and file" (92 Cong. Rec. 5806).

Senator Stanfill, in discussing the amendment stated:

> "Mr. President: When the National Labor Relations Act was made a law everyone regarded foremen as employers or responsible agents thereof, rather than employees, as the terms were used for the purpose of the statute" (92 Cong. Rec. 5158).

The Case Bill containing the above amendment was passed by the Senate (92 Cong. Rec. 5847) and thereafter adopted by the House (92 Cong. Rec. 6036-6057). The act was subsequently vetoed by the President and returned to the House and that body again voted in favor of the act, failing to over-ride the President's veto by a margin of only five votes (92 Cong. Rec. 6798, 6801). A clearer expression of the intent of both the Senate and the House with respect to the inclusion of supervisors under the coverage of the National Labor Relations Act would be difficult to frame.

4. The Legislative History of the Act clearly indicates that Congress did not intend that foremen should be considered "employees."

Legislative history may be considered to determine the intent of Congress. *N.L.R.B. v. Pa. Greyhound Lines*, 303 U. S. 261, 265; *A.F.L. v. N.L.R.B.*, 308 U. S. 401, 408; *N.L.R.B. v. Hearst Publications*, 322 U. S. 111.

In the Congressional debates, members of Congress were discussing means "designed to protect the *laborer*" (Cong. Rec. May 15, 1935, Vol. 9, No. 101, page 7847).

Congressman Wagner stated:

> "Congress determined to fix *wages* and *hours* at a level that might by reemployment and higher pay spread adequate purchasing power among the masses * * *" (p. 7849).

It is further stated (p. 7854):

> "* * * We have cherished always the ideal of employers and *workers* meeting together with free and open minds in order that they may exchange views and arrive at solutions based not upon compulsion but upon mutual concessions and mutual benefits * * * The central idea of all these efforts has been to promote the making of collective agreements between employers and *workers* without exercising any compulsion upon either side * * *."

And again at page 7855, Senator Wagner said:

> "* * * An upright, impartial, and peaceful forum to industry and *labor* will benefit *employers, workers,* and the country at large."

Senator Tydings speaks of "*workingmen*" (p. 7954), and Senator Borah speaks of "a very large body of *workingmen*" (p. 7955).

It is clear from a reading of the record that Congress had in mind the protection of "labor" and the "workingman" and not the protection of supervisory employees such as the foreman level of management in this case. Certainly the record in the instant case would not indicate that the foremen in the light of compensation paid them fall within the "masses" who were at that time thought to require higher pay and increased purchasing power (II, 813). The foregoing intent was further demonstrated

during the debate in the Senate when Senator Tydings proposed an amendment to Section 8 to the effect that coercion "by any person" instead of merely the employer should constitute an unfair labor practice under the Act. During this debate, Senator Barclay, one of the proponents of the Bill, stated:

> "It might be possible for an employee to persuade a fellow employee that he ought to belong to one union or the other, but I cannot understand how a man who is working for wages can go to a man working for the same employer, or for a different employer and intimidate or coerce the other employee to join or not to join a particular union, because *neither one of them can fire the other from his job.*"

This language clearly demonstrates that the Senate did not consider supervisors, such as foremen, as employees within the definition of that word as used in the Act, because foremen, as clearly disclosed by the record in this case, including the foremen of all levels, have the right to fire a worker or to make recommendations in that respect, which are almost universally carried into effect (II, 995; I, 337; 338-340, 611).

Further light upon the intent of Congress is found in the House Committee report upon the Act. (H.C. Rep. No. 1147, 74th Cong.). In this report, there is no mention of supervisory employees but an abundance of comment and reference to many articles dealing with strikes by workers. In this report, the Committee quotes from an opinion by former Chief Justice Taft and says:

> "This statement is a sufficient answer to those who, with questionable disinterestedness, proclaim that rugged individualism is the great boon of the American *workingmen;* or that there is something un-American in the movement by *workers* to pool

> their economic strength . . . While the bill does not require organization along such lines, and makes no distinction between such organizations and others limited by the free choice of the *workers* to the boundaries of a particular plant or employer, it is imperative that employees be permitted so to organize, and that unfair labor practices taking in workers and labor organizations beyond the scope of a single plant be regarded as within the purview of the bill."

Here again the Committee makes it clear that its members are thinking about "workmen" and "workers" and not supervisory employees.

As stated by Judge Simons dissenting from the denial of the petitioner's Motion for Rehearing in the lower court: (R. III, 27)

> "Review of the legislative history of the Wagner Labor Act, the labor literature of the period preceding and following its enactment, and the many decisions interpreting and applying it, leads inescapably to the following conclusions: (1) That the dominant purpose in the minds of its proponents was the fashioning of mechanism by which 'laborers,' 'workers' and 'production men' in the great mass industries, until then impotent, might achieve bargaining power on a parity with the economic power which the development of such industries had lodged in the hands of the employing class; (citing testimony of William Green, President of the American Federation of Labor; Francis Biddle, Chairman of the NLRB under the NIRA; Lloyd K. Garrison, Dean of the University of Wisconsin Law School, first Chairman of the NLRB under under NIRA; Charlton Ogburn, counsel for the AFL; reported in 'Hearings before the Committee on Education and Labor, United States Senate, 74th Congress, 1st Session on S 1958 (1935) U.S. Gov't. Printing Office,' Senator Wagner's discussion of the Wagner Act, 79th Congressional Record

No. 101, p. 7846 *et seq.*, May 15, 1935; Senator Wagner, 79th Congressional Record No. 102 pp. 7949 to 7960, 7967 to 7980, May 16, 1935; Senator Norris, Vol: 79 Congressional Record No. 102, pp. 7949 to 7960, 7967 to 7980.) (2) that prior to and for a substantial period following the enactment, supervisory employees were not identified with the labor movement, were for the most part without labor consciousness, generally considered themselves allied with the employing class and occupying a status above standards needing unionization; (citing The Status of Supervisory Employees under the NLRB. Walter L. Daykin, Associate Professor of Labor Economics, University of Iowa, 29 Iowa Law Review 297. *In re Maryland Drydock Co.*, 49 NLRB 733; *In re Union Collieries Coal Co.*, 41 NLRB 165, dissenting opinion of Gerard D. Reilly.) and (3) that orders of the Labor Board imposing discipline upon employers for violations of the Act stem almost invariably from discrimination, threats, espionage and domination by such supersory employees. (citing: Almost any Labor Board case decided by a Court of Appeals or the Supreme Court of the United States.)

Wherefore, I adhere to the views expressed in the dissent to the decision in the above cause, always keeping in mind that the Labor Act must be construed in the light of the social and economic conditions that brought about its passage, and I would grant the petition for rehearing."

5. Related Legislation supports position of petitioner.

It is a well known rule of statutory construction that a legislative body is presumed to have acted with full knowledge of prior legislation. *Hecht v. Malley*, 265 U. S. 144; *Sutherland Statutory Construction* (3rd Edition), Sec. 4510; 56 *C. J.*, 1008.

In the year 1926, in the Railway Labor Act (46 *U.S.C.A.*, section 151), Congress defined the term "employee" as follows:

> "The term 'employee' as used herein includes every person in the service of the carrier * * * who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission."

This Act was amended less than one year before the introduction of the National Labor Relations Act. If Congress had intended to include supervisors or representatives of management within the definition of an "employee" in the National Labor Relations Act, it would have used appropriate language to that end in the same manner as was done in the Railway Labor Act.

The Board argues that the inclusion of the words "subordinate officials" in the Railway Labor Act is a clear indication of Congressional policy to extend the protection of collective bargaining to this class of employees. There can be no quarrel with this argument as far as the Railway "employees" are concerned because the words of Congress specifically included subordinate officials and Congress apparently felt it was necessary to specifically designate these subordinate officials or they would not be covered by the Act. It is a clear indication that Congress felt that the term "employee," even as used in the Railway Labor Act, was not broad enough to even include "subordinate officials," as otherwise the term would not have been inserted in the definition. The reverse is likewise true. If Congress had intended that levels of management should be included in the term "employees" under the National Labor Relations Act, Congress would have so stated.

The Merchant Marine Act of 1936 (46 U.S.C.A. 1251) passed the year following the adoption of the National Labor Relations Act, provides in Section 1253(c) that the term "employee" means "any person who performs any work as an employee *or subordinate official*. * * *" Congress must have considered that it was necessary to use the words "subordinate official" and not merely "employee" in order to bring any supervision within the provisions of that statute. Attention is also called to the fact that the Merchant Marine Act expressly provides (Section 1252) that the provisions of that Act shall not in any manner be construed to limit, affect, or repeal the provisions of the National Labor Relations Act, but shall be construed to supplement the latter. Thus, it is apparent that Congress had before it the distinction between the term "employee" and "subordinate official," or in other words, the distinction between the worker and management. Otherwise, there would be no reason for Congress to have inserted the words "subordinate officials."

Subsection (6) of Section 1101 of the Social Security Act (42 U.S.C.A. 1301) provides: "The term 'employee' includes an officer of a corporation." This Act was construed in the case of *Deecy Products Co. v. Welch*, 124 F. 2d 592. The Court said in part (p. 595):

> "There is a definite reason why Congress should have enacted Section 1101 (a)(6) even though it is taken to mean that a corporate officer *can* be an employee. In enacting this section, it is more likely that Congress was directing its attention to the real dispute whether a corporate officer was the type of person intended to be protected by remedial state acts rather than any dispute about corporate officers meeting the ordinary employment relationship tests * * * In the absence of Section 1101 (a)(6), it could have been argued that, granting the

> ordinary employment relationship existed with respect to corporate officers, *still these superior employees were not intended to be covered by the Act.* For that reason, Congress might well have felt the necessity of inserting such a section as Section 1101 (a) (6) in the Act *so that it would be clear that the Act covers superior employees as well as inferior employees.*" (Emphasis added.)

Here again in legislation dealing with social problems, Congress specifically enlarged the definition of "employee." It is only reasonable to assume that if Congress had intended to include foremen under the term "employee" in the Wagner Act, it would have evidenced that intent as it did in the Railway Labor Act, the Merchant Marine Act and the Social Security Act.

6. Congress must be presumed to have enacted the statute having in mind the universal rule that an agent will not be allowed to enter into a relationship which may conflict with the interests of the principal.

The law prohibits agents from entering into relationships which might cause or result in a conflict with the interests of the principal. This is true whether the temptation to be disloyal is to the benefit of the agent or others or because by entering into such a relationship the agent will fall under the control of others. The rule is one of the oldest known to the law, is of universal application, and has been stated and restated many times in the strongest terms.

In *United States v. Carter*, 217 U. S. 286, the United States Supreme Court quoted with approval from *Aberdeen Railroad Co. v. Blackie Brothers*, 1 MacQueen's App. Cases 461, as follows:

> "And it is a rule of universal application, that no one having such duties to discharge, shall be al-

lowed to enter into engagements in which he has, or can have, a personal interest conflicting, *or which possibly may conflict* with the interest of those he is bound to protect.

"So strictly is this principle adhered to, that no question is allowed to be raised as to the fairness or unfairness of a contract so entered into."

In *Pratt v. Shell Petroleum Co.*, 100 F. 2d 833 (C.C.A. 10) cert. den. in 306 U. S. 659, the Court said:

"It must be held upon plain principles of reason and sound public policy that an agent occupying a place of trust and confidence is not permitted to put himself in a position in which his personal interests may come in conflict with his duty to his principal."

In *Commonwealth Finance Co. v. McHarg*, 282 Fed. 560 (C. C. A. 2), the Court said:

"No principle is better established in the law than that loyalty to his trust is the first duty which every agent owes to his principal. It underlies all agencies. The law condemns as contrary to public policy any conduct in an agent which involves a breach of fidelity in that relationship which is most jealously guarded."

In *Robertson v. Chapman*, 152 U. S. 673, Mr. Justice Harlan, at page 681, said:

"While his agency continues he must act in the matter of such agency solely with reference to the interests of his principal. The law will not permit him, without the knowledge or assent of his principal, to occupy a position in which he will be tempted not to do the best he may for his principal."

In *Glover v. Ames*, 8 Fed. 351, the Court said:

"While acting under this authority (as agent) he could not assume any duty incompatible with the

> interest of his principal, nor act in any transaction where he himself had any adverse interest,"

and quoting from Judge Story's Commentary on Agencies (Sec. 210), added that the rule against divided loyalty

> "is founded upon the plain and obvious consideration that the principal bargains in the employment for the exercise of the disinterested skill, diligence and zeal of the agent for *his* exclusive benefit."

In *Union Cent. Life Ins. Co. v. Berlin*, 90 Fed. 799 (C. C. A. 6), the Court said:

> "The law, on grounds of public policy, demands the utmost loyalty from agent to principal at all times, and does not permit the agent, by reason of his personal interest or otherwise, to assume an attitude in conflict with the very best interests of his principal."

And in *Wadsworth v. Adams*, 138 U. S. 380, the Court said:

> "The law requires the strictest good faith upon the part of one occupying a relation of confidence to another."

The rule applies to every agent, "however limited his authority." *Trice v. Comstock*, 121 Fed. 620 (C. C. A. 8).

It is not wrong-doing, but the possibility of wrong-doing, that calls the rule into operation. As stated in *Stephens v. Gall*, 179 Fed. 938, the rule

> "has its foundation, not so much in the commission of actual fraud, as in that profound knowledge of the human heart which dictated that hallowed petition, 'Lead us not into temptation, but deliver us from evil' and that caused the announcement of the infallible truth that 'a man cannot serve two masters.'"

Or, as stated in *Michoud v. Girod*, 45 U. S. 503, 555:

> "It acts not on the possibility that in some cases the sense of that duty may prevail over the motive of self-interest, but it provides against *the probability in many cases, and the danger in all cases,* that the dictates of self-interest will exercise a predominant influence and supersede that of duty."

No one could successfully contend that a foreman would not violate this rule when he obligates himself to an organization such as the FAA, and subjects himself to its influence, pressure and control. The aims and the principles of the FAA, as hereinafter set forth, will directly conflict with his duty to the respondent to save labor, increase productivity, reward merit, and inspire competition. When foremen unionize they amalgamate themselves into the labor movement and become subject to influence and control by others in this union movement, including the very men the foreman is supposed to supervise and discipline. Once collective bargaining is granted to the FAA even those foremen who do not favor being regimented into a unit will be placed in a position where union pressure may very well overcome their personal desires. Those who favor such an arrangement do so because they desire help for themselves and for their association against the respondent. If the foreman encourages his men to join the UAW-CIO, he may cause the respondent to violate the Wagner Act. The Board in cases of that character, supported by the courts, has always ruled that the foreman is the agent of the company and the company is punished for his acts. Such a foreman would be an unfaithful agent, whether he acted because the UAW-CIO helped his association, or because he hoped the UAW-CIO would support his demands on the respondent, or because the UAW-CIO through pressure on his union dictated his action. If for any of these reasons, he should fail to disci-

pline an official or member of the UAW-CIO or keep on men he did not need, or permit the men to slow down in their work, the wrong would be equally great.

The Board insists, however, that the remedy for disloyalty on the part of its agents "lies implicitly in the power of the company to discipline or discharge them." *Matter of Chrysler Corp.*, 44 N.L.R.B 881; *Matter of Ingalls Shipbuilding Corp.*, 55 N.L.R.B. 113; *Matter of Chrysler Corp.*, 55 N.L.R.B. 220; *Matter of Packard Motor Car Co.*, 61 N.L.R.B. 4.

The Board mistakes the purpose of the rule. The rule of law against divided loyalty was not adopted to punish a wrong but to prevent it. The law does not seek to indemnify principals after disloyalty has resulted in damage. It intends to eliminate the risk of disloyalty by forbidding ties that make it hard for agents to be faithful or easy for them to be unfaithful.

The disloyalty that, under the law, justifies discipline or discharge arises at the very moment when the agent for his own benefit in dealing with the company, affiliates himself with anyone whom he supervises and whose demands upon him as a union man conflict with his acting singlemindedly for his principal.

The power to discipline is, and can be, no solution. It would be impossible for the respondent in this case to police every one of its some 1200 foremen (and 32,000 workers in order to be in a position to know whether or not the foremen were arriving at their decisions because of influence or pressure of the union. As heretofore pointed out, upper management above the foreman level consists of only 76 persons (III, 1815). They are not in a position to know whether or not a foreman is acting in a disloyal manner. Upper management is forced to select in the first instance foremen it believes to be loyal to the

company, and it must of necessity accept the judgment of these foremen in connection with matters involving the rank and file.

The Board points out that the foremen can, without the benefit of the Act, join a union. The Board then further contends that those who do join the union would be subject to the same influences whether or not the union was given the power of collective bargaining under the Act.

The FAA now can claim only to speak for its members. Its officers are therefore not a present in position to assert themselves. If given the right to collective bargaining, it will represent *all* of the foremen. The Act gives the union the right to exclusively represent everyone in the bargaining unit with respect to "rates of pay, wages, hours of employment, or other conditions of employment." The foremen in the unit would be required to subordinate their individual interests to what is deemed best by the union for the collective interests of the group. The Board has so applied the Act, notwithstanding the provisions of Section 9(a) of the Act authorizing the individual to present his grievances to the employer. *Matter of Hughes Tool Co.*, 56 N.L.R.B. 981; *Matter of North American Aviation, Inc.*, 44 N.L.R.B. 604.

Once a representative for the unit has been chosen, even with the slight majority in this case, each member of the unit, whether willing or unwilling, surrenders his individual right to bargain with his employer, and thereafter must deal exclusively with the bargaining agent. *N.L.R.B. v. Knoxville Publishing Co.*, 124 F. 2d 875 (C. C. A. 6); *J. I. Case Co. v. N.L.R.B.*, 321 U. S. 332; *Order of Railroad Telegraphers v. Railway Express Agency, Inc.*, 311 U. S. 342.

The union is thus given sweeping control which powerfully supplements their control of the members only, and

places the leaders in position to drive any objecting member of the unit into line, and really apply union principles, union coercion, and union pressure.

Even more important is the fact that if the court should hold that foremen are "employees" within the meaning of the Act and force the respondent to collectively bargain with them, management will lose the right which the War Labor Board Panel states it should have "to weigh and determine for itself the appropriate weight to be assigned to merit, ability and seniority" (to which must be added loyalty) in promotions, demotions, transfers and discharges.

One of the most important attributes of an executive is his ability to select the right man for the job. There are many imponderables, many intangibles that enter into the selection of foremen or any member of supervision. The good executive senses who will or who will not be a proper person to fit a particular job. He is like the aviator who "flies by the seat of his pants." In many cases, it would be difficult or impossible for such an executive to specifically list in cold words the reason for his selection of a particular person for a particular job.

Furthermore, when a foreman or any other supervisor is selected, it is essential that there be no question as to his loyalty to the company. The company is in no way concerned with the social activities of members of supervision so long as those social activities do not interfere with their duties. The company is not concerned with any organiaztion an employee desires to join so long as he does not place his loyalty to the organization or the members over and above his duty to the company. When, however, any foreman or any member of the managerial team associates himself with any organization whose principles and whose methods and whose avowed purposes are

contrary to the best interests of the company, then the company must have the right to dispense with his services. The company in such a case should not be required to definitely prove that the particular foreman had actually himself engaged in practices detrimental to the best interests of the company. It must be free to act as soon as a foreman joins an organization whose principles conflict with the interest of the company that the foreman is supposed to foster.

What will happen if the Board's construction of the Act is followed is well illustrated in the case of *Wyman-Gordon Co. v. N.L.R.B.*, 153 F. 2d 480 (C. C. A. 7, Feb. 9, 1946). In that case, the Company had discharged an employee for deliberately producing poor quality war material, for soliciting union membership which interfered with war production, for being a troublemaker, and for conducting himself without the slightest regard for the duty which he owed the petitioner. The Board cited the Company under the Act, claiming that the employee was discharged for union activities, and that this was an unfair labor practice. The Board conceded the employee's misconduct but argued that it did not "seriously" interfere with the work of other employees, that his interference did not cause "serious" loss of production, that he did not cause "undue" spoilage of materials, and that the Company did not prove that the employee was "enormously" delinquent. The Court took the position that any interference, slight or otherwise, damaging to the war effort was serious and any employee who deliberately indulged in such practice should have been discharged forthwith, and further stated that the Company was entitled to be commended rather than criticised for its action in that respect.

The cases of *Interlake Iron Corp. v. N.L.R.B.*, 131 F. 2d 129, and *N.L.R.B. v. Williamson-Dickie Mfg. Co.*, 130 F.

2d 260, also illustrate the absurd lengths to which the Board will go in discharge cases.

If the Court holds with the Board, then in every case where the respondent discharges or demotes foremen, the claim will be made by the Board that the discharge or demotion was discriminatory and based upon the union activities of the foremen affected and will bring an unfair labor charge against the respondent, as in the *Wyman* case, regardless of the merits of the case. As hereinbefore stated, if the petitioner is to properly carry out its function of producing goods, upper management must have the right to say who the managers of the company shall be, and not be in the position where it will be hauled before the Board in connection with every action it is forced to take for its own protection against disloyal foremen.

Certainly Congress did not intend that the Act should be construed to bring about these results. It must have intended that the term "employee" as used in the Act did not include these agents of the company whose undivided loyalty the company must have if in the public interest it is to continue to efficiently function.

7. Construction placed upon the Act by the Board would lead to unreasonable and intolerable results which Congress would never have intended.

The effect of enforced unionism of the foremen upon the foremen, industry, and the country at large is developed under Point II of this brief, and reference is made thereto.

It is the position of the respondent that the effect of such enforced unionism clearly indicates that Congress did not intend that foremen should be considered "employees" under the Act.

8. Court decisions on the question of whether supervisors are "employees" under the Act.

The Circuit Court of Appeals and the Board cite the case of *N. L. R. B. v. Hearst Publications, Inc.*, 322 U. S. 111 as supporting the position that foremen are employees within the meaning of the act. In the *Hearst* case the court had to determine whether Congress intended that the Act should have "uniform national application" (p. 126), or whether "technical legal refinement" (p. 125), differing in the various states as to the distinction between an employee and an independent contractor should prevail. No such question is presented here.

In the *Hearst* case the question was whether newsboys selling newspapers were employees under the act. The court found that these newsboys were, for all intents and purposes, rank and file employees and placed them in the category of "workers" using that word a number of times in its opinion (pp. 125, 126, 130). These newsboys did not have any of the attributes of an employer and in no sense could they be said to be acting in the interest of the publishers directly or indirectly. In the *Hearst* opinion (p. 124) the court said that the question as to who is to be included within the term "employee" "must be answered primarily from the history, terms and purposes of the legislation." It is submitted that it has been demonstrated in this brief that applying the above test, foremen, because of their duties, powers and responsibilities, were not intended by Congress to be considered employees within the meaning of the act. The court emphasized the fact that it was not the intent of Congress to include all service relationships within the act: "It cannot be taken, however, that the purpose was to include all other persons who perform services for another or was to ignore entirely legal classifications made for other purposes." (p. 124);

"Congress had in mind * * * a narrower field than the entire area of rendering service to others" (p. 124); and "myriad forms of service relationships * * * blanket the nation's economy. Some are within this Act, others are beyond its coverage" (p. 126).

It is submitted therefore that the *Hearst* case not only does not support the position taken by the Circuit Court of Appeals and the Board in this case, but on the contrary supports the position taken by the petitioner. See *N. L. R. B. v. E. C. Atkins Co.*, 147 F. 2d 730.

In its opinion in this case the Circuit Court of Appeals cites decisions of other courts as authority for the position that foremen are employees within the meaning of the act. It is pertinent to note that in none of these cases was this question a major issue and that the so-called supervisors involved were not in the front line of management as in this case.

In the *N. L. R. B. v. Skinner and Kennedy Stationery Company*, 113 F. 2d 667 (C. C. A. 8) the board found that the Company had discharged a person named Eckert, an alleged foreman, because he had joined the A. F. of L. rank and file union and ordered him reinstated. The case was taken to the Circuit Court of Appeals for the Eighth Circuit and the court adopted an early statement of the board to the effect that "a foreman in his relations to his employer is an employee, while in his relationship to the laborers under him he is a representative of the employer within the definition of Section 2 (2) of the act." It should be noted that in the Board's "Decision and Order" in this case (13 N. L. R. B. 1186) no claim is apparently made in the employer's answer to the Board's Complaint that Eckert was a supervisor and not covered by the act. As stated the Board stated on Page 1193 of its "Decision and Order," it was not until the oral argument before the board that counsel for the employer made this point.

The employer in the Skinner case was engaged in general commercial printing (P. 1188 of the board's opinion). Eckert was foreman of the cylinder press roll (P. 1192), and the labor organizations involved were the typographical unions (P. 1189). These unions for years have admitted formemen as well as printers to their membership and have a history of collective bargaining for foremen in a unit containing the rank and file. The typographical and maritime unions and their members were made an exception by the board even in the *Maryland Drydock* case, *supra*.

Member Riley in his dissenting opinion in the instant case said (R. III, 1834):

> "For one thing, only two of these industries—the printing and maritime trades—even fall within the scope of the National Labor Relations Act, and the pattern of collective bargaining established in them grew up quite independently of this statute and in some respects is quite contrary to its basic concepts. Because of the traditions of the sea, implemented by the admiralty laws, there is little danger of the officers and crew merging their respective labor organizations. In the newspaper field, where the foreman is traditionally a member of the Printers' Union, the composing room staff operates almost as independently of the publisher as would be the case if the work was done by a job printing establishment. Then again, in none of the enumerated industries is this country particularly unique, and the technological developments in these fields in recent years have been relatively minor. An entirely different spectacle is presented by the mass production industries, where the constant development of technological science, with the resultant subdivision of labor operations, requires constant attention in the coördination of production with supervisory and engineering techniques. It is these industries which have made this country the

foremost industrial nation of the world and contributed so heavily to war production, and it is in these industries that the basic principles of the National Labor Relations Act have been most frequently applied. It therefore seems to me that we may well be forcing these industries and their employees into a Procrustean bed when we project upon them practices which have grown up in entirely unrelated fields."

The opinion of the court in the Skinner case concludes "nothing in the act *excepts* foremen from its benefits nor from protection against discrimination nor unfair labor practices of the master." With all due respect to the court it is submitted that the question was not whether the act "*excepts*" foremen, but rather does the act *include* foremen. It has been demonstrated in this brief that the act does not "include" foremen.

Furthermore, it does not appear in either the Board's opinion or that of the Circuit Court of Appeals that Eckert's duties were such that he could be said to be in the front line of management as the foremen in the instant case were found to be by the lower court.

In the *Eagle-Picher Mining and Smelting Company v. N. L. R. B. case*, 119 F. 2d 903 (C. C. A. 8) the court found that a man named Sheppard was discharged for union activities. The employer contended that Sheppard was an executive and the court held he was an employee within the meaning of the act. It further appears that Sheppard was really only a "working supervisor" (P. 911). It does not appear from the court's decision that the arguments presented in this brief were presented to the court in the *Eagle-Picher* case.

In the case of *N. L. R. B. v. Star Publishing Company*, 97 F. 2d 465 (C. C. A. 9) neither the opinion of the court nor the opinion of the Board (4 N. L. R. B. 498) shows that

the claims made were that the supervisors were not within the protection of the act. Here again the printing and publishing trade was involved and it appears that the duty of the so-called branch manager involved consisted merely of taking newspapers from the newspaper plant to the newsboys in the territory and instructing them with respect to delivery.

In the case of *N. L. R. B. v. American Potash and Chemical Corporation*, 98 F. 2d 488 (C. C. A. 9) a foreman was demoted but the opinion did not indicate that the employer claimed that a foreman is not protected by the act. Neither does this contention appear in the Board's "Decision and Order" (3 N. L. R. B. 140).

In the case of *Hazel-Atlas Glass Company v. N. L. R. B.*, 127 F. 2d 109 (C. C. A. 4) the Company discharged a foreman named Carder who had refused to carry on his duties when the workers struck. The court refused to enforce the part of the Board's order which required Carder's reinstatement because the court concluded that he had not been discharged for union activities. The question of whether Carder was or was not an employee within the meaning of the act is therefore not essential to the decision in the case.

In the case of *N. L. R. B. v. Armour & Company*, 17 L. R. R. 372 (C. C. A. 10) foremen were not involved. This case dealt with plant clerks, and is therefore not in point.

In the instant case the lower court says that "The sweeping character of the definition (of employer) is explained by the fact that Congress evidently thought the employer must be held responsible for any effort of the supervisors to destroy collective bargaining." The court thus admits that the definition of an employer in the Act does include supervisors. It cannot, however, be conceded that Congress used the language solely for the purpose of

holding the employer responsible for the acts of supervisors. It is a well recognized principle of law that an employer is ordinarily bound by the actions of his supervisors and no such statement would be required in the act. Congress therefore did not use the language in question for the purpose indicated by the court, but rather to include supervision on the employer's side of collective bargaining and not on the employees' side.

It is submitted therefore, that decisions relied on by the Board and lower court on this question have little or no weight as precedents and that insofar as they indicate that foremen in the mass production industries are "employees" within the meaning of the act, they should not be followed.

In the case of *N. L. R. B. v. E. C. Atkins and Company*, 147 F. 2d 730; 155 F. 2d 567, the Circuit Court of Appeals for the Seventh Circuit held that militarized guards were not employees under the act. This case was carried by the Board to the Supreme Court. Subsequently, the plant guards were demilitarized and the Supreme Court remanded the case to the Seventh Circuit for further consideration. The Seventh Circuit (155 F. 2d 567) held that the demilitarization of the guards made no difference and affirmed its previous decision denying the boards enforcement order. The court said (P. 567-568):

> "We formerly refused to enforce the Board's order on the ground that, since the alleged employees (plant guards) were militarized, they were not employees of respondent within the meaning of § 2(3) of the National Labor Relations Act, 29 U. S. C. A. § 152(3). Alternatively, we held that even if the guards, despite their militarized status, be considered employees of respondent, enforcement of the Board's order 'should not be allowed * * * (because) to do so would be or is likely to be inimical to the public welfare.'

> "We have considered the facts relative to the changed status of the plant guards by reason of their demilitarization and are of the opinion that they are irrelevant to the issues which we have heretofore decided adversely to the Board. Certainly such is the case with reference to our decision that the plant guards were not employees of respondent within the meaning of the Act. In fact, the irrelevancy of the changed circumstances as to this issue is conceded by the Board. We are urged by the Board, however, to reverse our former decision and to hold that the plant guards were employees. We have also given this matter further consideration and are of the opinion that our former decision in this respect was correct, and we reaffirm it."

If plant protection guards are not employees within the meaning of the act, certainly the foremen of the petitioner who exercise more power, have more responsibility and are much more important to management are not employees within the meaning of the act.

POINT II

THE CIRCUIT COURT OF APPEALS AFTER HOLDING THAT THE GENERAL FOREMEN, FOREMEN AND SPECIAL ASSIGNMENT MEN OF THE PETITIONER WERE "EMPLOYEES" WITHIN THE MEANING OF THE NATIONAL LABOR RELATIONS ACT, ERRED IN HOLDING THAT THE BOARD COULD PROPERLY INCLUDE SUCH "EMPLOYEES" IN ANY UNIT FOR THE PURPOSE OF COLLECTIVE BARGAINING

Section 9(b) of the Act reads as follows:

> "(b) The Board shall decide in each case whether in order to insure the employees the full benefit of their right of self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit for the purpose of collective bargaining shall be the employer unit, craft unit, plant unit or a subdivision thereof."

A. Power of the Board to exclude supervisors from any bargaining unit.

In the Memorandum for the Board filed in this Court in connection with the petitioner's Petition for a Writ of Certiorari, the Board states that it will urge upon this Court that the Board is without power to deprive supervisory employees of statutory rights by holding that such employees could not constitute an appropriate bargaining unit.

The Board had consistently held prior to its decision in *Matter of L. A. Young Spring & Wire Corp.*, 65 N. L. R. B. 298, decided January 8, 1946, and subsequent to its decision in the instant case, that Section 9(b) conferred upon the Board administrative discretion, not only to determine which of the several units mentioned in the Section would be appropriate, but also to decide that some employees could not constitute an appropriate unit in any circumstance. The Board in the *Young* case reversed itself and said: "We are now persuaded that this interpretation is unjustified and should not govern future Board Rulings."

The Board said further:

> "Under the power to define the unit, the Board may properly insist that foremen be organized in bargaining units apart from their subordinates, but it cannot ostracize them. In this view, the kind of industry in which foremen are employed is immaterial, and the duties and responsibilities of foremen are relevant only insofar as they bear on the question of proper grouping for collective bargaining purposes."

As noted above, the Board in the *Matter of Jones & Laughlin Steel Corp.*, 66 N. L. R. B. 386, decided subsequent to the decision in the case now before the Court,

and on March 7, 1946, held that in view of the "full freedom" granted by the Act in the selection of representatives by employees, it was powerless to deny supervisors the right to be represented by any *bona fide* labor organization, whether affiliated or unaffiliated with a rank and file union.

This Court has not directly passed upon this question. In the case of *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 146 F. (2d) 718, the Sixth Circuit Court held that while the Board may have properly determined that militarized plant guards were "employees" within the meaning of the Act, that nevertheless, the Board could not stop with its findings upon the facts that the plant protection employees are entitled to the benefits of collective bargaining. It is required under Section 9(b) to determine whether the unit or units selected for that purpose would effectuate the policies of Sections 151-166 of this title * * *." The Court further stated: "The Board, under Section 9(b), had a positive duty to perform in the interests of the public." The Court then denied enforcement of the Board's order on the ground that the Board had abused its discretion in certifying a rank and file union as the collective bargaining representative for plant guards, saying:

> "When they were inducted into unions and became subject to their orders, rules, and decisions, the plant protection employees assumed obligations to the unions and their fellow workers which might well in given circumstances bring them in conflict with their obligations to their employers. * * *"

The Court also stated:

> "We think the imposition of such strains upon personal allegiance and personal interest would undoubtedly be detrimental to the public interest and to the free flow of commerce."

In the case of *N. L. R. B. v. E. C. Atkins & Co.*, 147 F. (2d) 730 (C. C. A. 7), the Board sought to enforce its order that the Company bargain with a rank and file union as the representative of the plant guards. The court in that case determined that militarized plant guards were not "employees" of the company under the Act and denied enforcement of the order. The court said on the matter of appropriate units:

> "The purposes and policy of the National Labor Relations Act are well known and need not here be dwelt upon. The Board must comply with the requirement 'that the unit selected must be one to effectuate the policy of the Act, the policy of efficient collective bargaining.'"

The Board appealed these decisions to the United States Supreme Court, and while the cases were pending in that Court, the plant guards were demilitarized and that fact was brought to the attention of this Court. This Court thereupon "remanded to the respective Circuit Courts of Appeal for further consideration of the alleged changed circumstances with respect to the demilitarization of the employees involved, and the effect thereof on the Board's orders."

In the *Jones & Laughlin* case, *supra*, the Sixth Circuit Court of Appeals (154 F. (2d) 932) on the remand again denied the Board's application for enforcement of its order requiring the Steel Company to collectively bargain with the plant guards.

The Seventh Circuit Court of Appeals in the *Atkins & Co.* case also again denied the Board's application for enforcement of its order (155 F. (2d) 567). The Court said in connection with the denial of the order:

> "We are urged by the Board, however, to reverse our former decision and to hold that the plant

> guards were employees. We have also given this matter further consideration and are of the opinion that our former decision in this respect was correct and we reaffirm it."

On the question of certification, the Court said:

> "Although we are doubtful that the facts concerning the demilitarization of the plant guards and their alternative holding that the enforcement of the Board's order 'would be or is likely to be inimical to the public welfare,' there is no necessity for decision on our part in this respect. This is so for the reason that the latter issue is immaterial in view of our decision that the plant guards are not employees."

The duties and responsibilities of plant guards, as set forth in the *Jones & Laughlin* and *Atkins & Co.* cases, are similar in certain respects to the duties and responsibilities of the foremen except that the foremen's duties and responsibilities are much greater and of much more importance to management.

It would seem that if the Board is correct in construing the Act to include in its coverage every person who receives compensation for services rendered to a corporate employer, then the board must have the discretion to determine whether or not it would be necessary in order to effectuate the purposes of the Act to exclude some of such employees from any unit, as the Board did in the *Maryland Drydock* case. Otherwise rather absurd results would follow. For example, under the Board's construction of the Act the vice presidents of a corporation would be employees—so would the president. On proper petition the Board, pursuant to its decision in *Spring & Wire Corp.* case, would be required to place these employees in a unit for collective bargaining purposes, and to be consistent with the instant case would have to include

the president in the same unit with the vice-presidents he supervised, as the Board in case included the general foremen in the same unit with the foremen they supervised. The result would be that the president and vice-presidents might well be not only members, but also officers of the union which would be representing them, and thus would be required as representatives of the corporation to collectively bargain with themselves over their rates of pay, working conditions etc. It is rather difficult to believe that Congress intended such a result.

It must follow, therefore, that Congress either intended that the Board should have the discretion to refuse to place levels of management in a unit for collective bargaining, or if the language of Section 9(b) does not permit such a construction, then that Congress did not intend that supervisory employees were to be considered employees under the Act, and that the Act was really intended, as the language clearly indicates, to protect the "worker," the "laborer," and the "wage-earner."

The Board in the Memorandum mentioned above takes the further position that if it does have discretion to exclude employees from any unit, it properly exercised that discretion in the instant case.

B. The Court should review the action of the Board on this issue.

The authority given to the Board by the Act must be reasonably exercised. The Court in the case of *Southern S. S. Co. v. N. L. R. B.*, 316 U. S. 31, had this to say with respect to the discretion of the Board:

> "This authorization is of considerable breadth, and the courts may not lightly disturb the Board's choice of remedies. But it is also true that this discretion has its limits, and we have already begun to

define them. *National Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U. S. 240, 59 S. Ct. 490, 83 L. Ed. 627, 123 A. L. R. 599; *Republic Steel Corp. v. National Labor Relations Board*, 311 U. S. 7, 61 S. Ct. 77, 85 L. Ed. 6. A complete definition of course was not and could not have been attempted in these cases. Nor will it be attempted here. It is sufficient for this case to observe that the Board has not been commissioned to effectuate the policies of the Labor Relations Act so single-mindedly that it may wholly ignore other and equally important Congressional objectives."

This Court in the case of *N. L. R. B. v. Jones & Laughlin*, 301 U. S. 1, said:

"* * * The order of the Board is subject to review by the designated court, and only when sustained by the court may the order be enforced. Upon that review all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of constitutional right or statutory authority, are open to examination by the court. We construe the procedural provisions as affording adequate opportunity to secure judicial protection against arbitrary action in accordance with the well-settled rules applicable to administrative agencies set up by Congress to aid in the enforcement of valid legislation. * * *"

See also: *Pittsburgh Plate Glass Co. v. N. L. R. B.*, 113 F. 690 (affirmed 313 U. S. 146); *Midland Steel Products Co. v. N. L. R. B.*, 113 F. (2d) 800 (C. C. A. 6); *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 146 F. (2d) 718 (C. C. A. 6).

The Board acts in a public capacity and in the public interest. *National Licorice Co. v. N. L. R. B.*, 306 U. S. 360, 362; *Amalgamated Workers v. Edison Co.*, 309 U. S. 261, 265.

The members of the Board have been unable to agree whether supervisory employees could constitute an appropriate unit for collective bargaining. The majority of the Board has reversed and re-reversed its findings and determinations on this question. There has not been one unanimous decision. This issue was first presented to the Board in the *Matter of Union Collieries Co.*, 41 N. L. R. B. 961, decided June 1, 1942, and the Board, one member dissenting decided that supervisors could be placed in a unit for collective bargaining purposes. On May 11, 1934, in the *Matter of Maryland Drydock Co.*, 49 N. L. R. B. 733, the Board, one member dissenting, reversed the *Collieries* case and held that supervisory employees did not belong in collective bargaining units, and later dismissed petitions for representation of foreman units in *Matter of Boeing Aircraft Co.*, 51 N. L. R. B. 67; *Matter of Murray Corporation of America*, 51 N. L. R. B. 95, and in *Matter of General Motors*, 51 N. L. R. B. 457, which involved the same so-called independent union in this case. In the instant case the Board, one member dissenting, reversed the *Drydock* case and held that foremen could be placed in a unit for collective bargaining if the unit was represented by a union not affiliated with the rank and file union, and that it was proper and appropriate to include in the one unit the general foremen, foremen, and assistant foremen, thereby reversing two previous cases, *Matter of Boeing Aircraft Co.*, 45 N. L. R. B. 60, and *Matter of Murray Corporation of America*, 47 N. L. R. B. 1003 in both of which cases the Board had held that it was inappropriate to include in one unit of supervision general foremen, foremen and assistant foremen, because it was not proper to include in one unit supervisors and those supervised. As noted above, the Board in the *L. A. Young Spring & Wire Corp.* case, *supra*, then reversed itself again and ruled that it did not have the power to decide

that some "employees" may not constitute an appropriate unit in any circumstance, and that therefore the kind of industry in which foremen are employed is immaterial and the duties and responsibilities of foremen are irrelevant only in so far as they bear on the question of proper grouping for collective bargaining purposes. The Board then held in the *Matter of Jones & Laughlin Steel Corp.*, 66 N. L. R. B. No. 51, decided March 7, 1946, and reversing in part the present Packard case, that a foremen's unit could be represented by union of the rank and file workers who were supervised by the foremen.

Chairman Herzog of the Board frankly admits that the Board is uncertain as to the correctness of its decision in the Packard case. He appeared at the Hearings before the Subcommittee of the Committee on Education and Labor of the United States Senate on H. R. 4908 (Case Bill), on February 28, 1946. The Bill provided, as noted above among other things, that supervisory employees, such as the petitioner's foremen, should not have the status of an "employee" for the purposes of Sections 7, 8 and 9 of the National Labor Relations Act.

Mr. Herzog told the Committee (p. 333):

> "The Packard case, which found that the Foreman's Association of America could bargain for the Packard Company foreman is now on its way through the courts, which will tell us during 1946 whether we were right or wrong in construing the statute as we have.
>
> "No one could be more aware of the difficult problems which are presented by this issue than are the three members of the Board: As I said in a concurring opinion in the second Packard case, the issue 'cannot be analyzed in terms of black and white. They present a study in grey.'"

The language of the court in the case of *Wyman-Gordon Co. v. N. L. R. B.*, 153 Fed. 480, is quite pertinent:

> "We realize that the findings of the Board must be accepted if substantially supported, notwithstanding that one member dissented and approved the recommendations of the Trial Examiner, which the majority of the Board refused to follow. We think, however, that such contrariety of views may be properly taken into consideration, in fact, that it has a material bearing upon the question as to whether the Board's findings are substantially supported."

The court then proceeded to make a complete investigation of the facts and findings and reversed the Board.

Based upon the uncertainty of the Board as set forth above; the fact that its own members cannot agree; the fact that the Board is apparently not too convinced of the correctness of its own decisions, and because of the importance of the issues involved, it is submitted that the Court may, and should make a full and complete investigation of the findings and determinations of the Board that foremen constitute an appropriate unit under the Act. The Court, it is respectfully submitted, should accept Chairman Herzog's invitation to determine whether the Board "was right or wrong in construing the statute as we have" and should not, in light of the history of this issue before the Board, feel constrained to accept any of the Board's findings or determinations because of any presumed specialized experience or expert knowledge of the majority members of the Board.

C. It was contrary to Public Interest and the General Policy of the Act, and therefore an abuse of discretion on the part of the Board to include the foreman level of management of the Petitioner in an appropriate unit under the Act.

1. The opinions of the Board on this issue.

The issue, as noted above, was first presented to the Board in the *Matter of Union Collieries Co., supra.* In this case, the Board ruled, Member Reilly dissenting, that foremen were employees within the meaning of the Act and that assistant foremen, fire bosses, weigh bosses and coal inspectors constituted an appropriate unit for collective bargaining.

Member Reilly filed a vigorous dissent, saying in part (pp. 971, 972):

> "* * * in our appraisal of factors entering into the conception of the word 'appropriate,' it is important to consider the possible impact of this decision upon the general policy of the Act."

Mr. Reilly also pointed out that a representative of the United Mine Workers who appeared at the oral argument of that case had indicated that if the Board extended the benefits of the Act to supervisors, the mine workers would probably seek to represent such persons in future negotiations with their employees. From this, Mr. Reilly argued that "even with the establishment of separate bargaining units, to have the same representative for supervision as for rank and file would result in a separation 'more theoretical than real'." He refers to the danger of organizational rivalry and the effect on the rule that an employer is responsible for interference by his supervisors with rank and file organizational activity. A supervisor promoting the interests of his union might well coerce, and impair the freedom of choice of his subordinates. Mr. Reilly concludes that even conceding the

position of the supervisors would be benefited by "effectuating their right to collective bargaining * * *" it seems to me that this is outweighed by the possible impingement upon the similar right of the greater number." (p. 972.)

On May 11, 1934, in the *Matter of Maryland Drydock Co., supra,* and while a movement was under way in Congress to enact legislation which would specifically prohibit foremen from joining unions for the purpose of collective bargaining as permitted by the *Collieries* case, the Board reversed the *Collieries* case and ruled that, except in industries having an established history of unionization of foremen, such as the printing trades, supervisory employees did not belong in collective bargaining units, and that the Board would not establish such units or certify unions that purported to represent foremen. The majority said:

> "We are now persuaded that the benefits which supervisory employees might achieve through being certified as collective bargaining units would be outweighed not only by the dangers inherent in the commingling of management and employee function, but also in its possible restrictive effect upon the organizational freedom of rank and file employees. It is not necessary to elaborate at length on each of these points."

The Board then points out that even in its earlier cases it recognized the danger inherent in the organization of supervisors, and sought to protect the ordinary employees by refusing to sanction the establishment of bargaining units containing both supervisors and their subordinates. The Board said further in that connection:

> "We are not convinced, however, that this measure affords adequate protection of the rights of the vast bulk of employees, whom the Act was specifically designated to protect. For, although super-

visors may nominally constitute a separate bargaining unit, it is clear that they may—as they did in the case at bar—affiliate with and designate as their representative the same union which represents their subordinates."

The Board also said:

"* * * We are of the opinion that in the present stage of industrial administration and employee self-organization, the establishment of bargaining units composed of supervisors exercising substantial managerial authority will impede the processes of collective bargaining, disrupt established managerial and production techniques, and militate against effectuation of the policies of the Act."

The Board then found that foremen as agents of management acted in a fiduciary capacity and that the National Labor Relations Act should not be so construed as to bring about a repudiation of the prohibition of the common law against fiduciaries serving conflicting interests, and then said:

"* * * imputation to management of liability for the conduct of its supervisors arises not from the mere inference that foremen reflect company policy but also by virtue of the fact that full-fledged supervisors constitute management in the eyes of their subordinates."

The Board on July 20, 1943, in the *Matter of the General Motors Corporation* (Detroit Diesel Engine Division) and *Foreman's Association of America*, 51 N.L.R.B. 457, dismissed the petition of the union which is involved in the instant case on the ground that unit of foremen was not an appropriate unit within the meaning of Section 9(b) of the Act. The Board in that case specifically found that the fact that the union seeking to represent the supervisory employees was an independent labor organization

not affiliated with the union which represented the production and maintenance workers did not obviate "the factors militating against the establishment of units of supervisory employees, set forth in our decision in the *Maryland Drydock* case."

Then the Board in the present case, Member Reilly dissenting (R. III, 1791), decided March 26, 1945, reversed the *Drydock* case. The majority of the Board attempts unsuccessfully to explain its reversal of the *Drydock* case and makes the startling statement that since that case "we have observed with concern the important development in the field of foreman organizations which are fully set out in the record before us, and which, we believe, requires a reconsideration of the entire problem."

A diligent search of the record will fail to disclose just what these important developments were that in eighteen months' time would persuade the Board that it was wrong in holding in the *Drydock* case that benefits to supervisors "would be outweighed not only by the dangers inherent in the commingling of management and employee functions, but also in the restrictive effect upon the organizational freedom of the rank and file employees" and "would be to view the statute as repudiating the historic prohibition of the common law against fiduciaries serving conflicting interests."

True, there had been a strike of the FAA which curtailed production of important and needed war materials (R. I, 233), but this would not seem to be a sufficient reason to overrule fundamental principles. As a matter of fact, as pointed out by Member Reilly in his dissenting opinion (R. III, 1830), the files of the Board show that in most of the strikes which had occurred during the war period, the organizations involved were unions which had the right to use collective bargaining. He pointed out that the Ninth Annual Report of the Board (p. 7374) dis-

closes that the bulk of strike notices seem to arise from dissatisfaction with the decisions of some Government agency, and that it was, unfortunately, no novelty to have disgruntled unions strike and interfere with production because the Board had refused to recognize units which they proposed as appropriate.

The effect of the Board's decision in the instant case is well stated by Member Reilly in his dissenting opinion:

> "In my opinion, the decision we are making today does irreparable damage to the delicate balance between the conflicting interests of management and worker which the National Labor Relations Act sought to bring about in American industry. From the very beginning of the administration of this Act, the Board has recognized that in mass production industries, the interests of foremen lay predominantly with management groups."

2. The application of Union principles to any part of management would be against the public interest and the policy of the Act.

The leaders of the FAA in this case stated very definitely that the FAA believed and would apply the same union principles as the CIO (R. I, 384, 546). The application of these principles would conflict with a proper performance by the foremen of their managerial duties. The result would be:

(i) *Splitting of the ranks of management*

The first objective of union leaders is to engender and foster in the employees a feeling of hostility against the employer. The employer becomes the hydra-headed monster which the union leaders must battle. This objective is accomplished by unsupported accusations of unfair treatment, improper discharges, promotions and demo-

tions. It follows a pattern that is apparently based upon the philosophy that an untruth or a series of untruths repeated often enough will finally be accepted as the truth.

Once the organization is formed, it must be kept intact and the same procedure is followed.

The leaders of the FAA have followed this procedure religiously and consistently. The president of the FAA delivered 39 organizational radio addresses in Detroit between February 24, 1943 and May 25, 1944 (R. III, 1536-1750). They were typical organizational speeches and full reign was given to extravagant, unsupported and unsupportable statements.

Thus, in his radio address of April 7, 1943 (R. III, 1570), Mr. Keys said: "We wonder if our employers realize they are doing Hitler a favor by attacking our right to bargain for a square deal." In his speech of April 14, 1943 (R. III, 1575), Mr. Keys accuses American business of a disregard of human rights and of a crushing of the weak by the strong. In his speech of December 9, 1943 (R. III, 1614), he accuses industry of "exploiting" the foremen. In his speech of December 23, 1943 (R. III, 1623), he stated: "The higher corporate profits mounted, the greedier plant ownership became, to the point where management sat up nights figuring out new schemes to increase production at the expense of the workingman." In the speech of January 6, 1944 (R. III, 1639-40), he refers to "that unsavory attempt on the part of General Motors and other corporations to legislate away constitutional rights for some five million foremen in America." In the speech of March 2, 1944 (R. III, 1680), he stated that under present conditions: "Any addle brain or prejudiced plant manager can make a scapegoat out of supervisor by discharging him in order to cover up his own managerial mistakes; or to satisfy a personal dislike;

or because he thinks it clever to make an example of a foreman or two for the express purpose of intimidating other foremen in the plant." In his speech of May 1, 1944 (R. III, 1730), he stated that management had proven by their actions during the past few years that "they are absolutely determined to retain the questionable privilege of continuing to exploit us in every conceivable manner. They have done everything to exploit us in every conceivable manner."

The same theme is stressed in every one of the 39 radio addresses.

This sort of propaganda will split the ranks of management and seriously disrupt the relationship between the upper management and the foreman level.

(ii) *Divided loyalty*

Mr. Traen, a general foreman and the President of Packard Local No. 5 of the FAA, testified that loyalty to the Union and its members was a principle of unionism; that the principle of "one for all and all for one," as among union members, applied (R. I, 384), and that the word "fidelity" in the emblem of the FAA meant faithfulness and concern for the interest of the members (R. I, 385).

Foremen act for and as representatives of management and their loyalty must be to management. The unionization of the foreman can only result in divided loyalty (R. II, 1049). Management would never know how the indoctrinated union foremen would act in the given situation (R. II, 1049). His duty to management might lie in one direction and his union interest, and the pressure of his union group that he may feel unable to resist, might pull him in another direction. Management could not know if a foreman making a decision considered the wel-

fare of the company or of his union and consequently would not be able to rely upon the decisions or on the recommendations of such foremen. The important and key functions for management now performed by foremen could not be discharged properly under such a condition (R. II, 1050).

To be more specific, management could not rely on the foremen to properly enforce discipline, to require the workers to perform a full day's work or to keep the costs down by avoiding loafing and surplus help (R. I, 1052-1053). Management would not know whether the desire of the foremen to secure the assistance of the workers' union when needed would cause him to be lax in discipline or in the carrying out of his duties and functions (R. II, 1052-1053). The foremen could no longer be management's representative in the first stage of the grievance procedure. This responsibility would have to be given to someone whose individual loyalty was to management (R. II, 1053).

In the event the C. I. O. or the A. F. of L. or some other union organization attempted to organize the foremen of *Packard* after the Foreman's Association had been given the right to collective bargaining, a fight would develop which would create confusion and slow up production (R. II, 1054-1055). Mr. Traen, stated emphatically that he would fight the organization of a rival foreman's union (R. I, 573). He admitted that it would not be impossible for a rival union to be formed (R. I, 575).

If foremen were members of the same union along with the workers, no reliance could be placed by management upon their recommendations or actions with respect to the workers (R. I, 575). The leaders of the workers' union are interested in keeping their members employed and are constantly making demands in that respect with no regard for cost (R. II, 1050).

If a general foreman were a member of the FAA and a foreman under him was a member of a rival association, management could not rely upon the general foreman's recommendations with respect to his foremen (R. II, 1057-1058) because his loyalty to his fellow members in the FAA and to the FAA or the pressure of the FAA would have a tendency to affect his judgment (R. II, 1058). A foreman should operate as an individual. He is in reality a manager of a small group and is in competition with his other foremen, this competition is necessary if the standards of the product are to be maintained (R. II, 1059).

(iii) *Majority rule*

Under union principles it is the majority of the union that would control the actions of its members. Mr. Traen, the President of Local No. 5 in discussing the FAA strike had this to say (R. I, 389):

> "Q. Did you attempt to stop it (the Packard foreman's strike)?
>
> A. Yes.
>
> Q. And you were unsuccessful?
>
> A. Very much so.
>
> Q. What attempt did you make to stop the strike?
>
> A. My attempt to stop the strike was prior to the vote. In fact, it was my intention to even stop the vote. I was flatly told that if I continued the way I was I was going to be recalled immediately.
>
> Q. In a case of that sort it would be the majority that ruled and they could recall you if they did not like what you did?
>
> A. Yes.
>
> Q. And that would go to any action your chapter might take. The majority would control?
>
> A. Yes.
>
> Q. And the majority in this case voted to strike, even though you did not want to strike?
>
> A. Yes.

Q. And you had to go along with the majority?
A. Yes."

Mr. Turnbull, a general foreman and the Secretary of Local No. 5 testified that if a majority of the members were out on strike the other members would have to join the strike even though they did not agree with the action taken and that if an officer of the Association opposed a strike too violently he might be recalled (R. I, 547).

The following testimony of Mr. Wilkins, one of the foremen witnesses, is very illuminating on the matter of the operation of union principles (R. I, 727-728):

"Q. (By Mr. Dahling): You stated, did you not, that if you had a brother member of the Foreman's Association who was assistant foreman in your department and you felt that he was incompetent and was not working properly you would recommend his removal from the roll, did you not?

A. The first thing we do is take that up with the Board.

Q. When you say the 'Board,' what Board?

A. Of the union.

Q. The Board of the Union?

A. Yes.

Q. That is the Foreman's Association of America?

A. That is right.

Q. What do you do at this Board meeting?

A. We state,

Q. (Interposing): When you take the matter up with the Board?

A. We state our case right in front of all the men on the Board.

Q. You state your case and take the matter up with the Board?

A. My case? In other words, the man's case, what he is able to do, what is wrong with him and let them be the judge.

Q. And then we will say that they vote that you are correct in your analysis of the situation and the man should be removed from the roll, what do you do then?

A. Recommend or suggest to the superintendent.

* * * * *

Q. Well, we will say that the majority of the FAA think that a man is competent but you still think that the man is incompetent and want him discharged and the Company goes ahead and discharges him and then the Foreman's Association strikes because of that, would you go out on that strike?

A. I would have to."

Mr. Keys, the President of FAA likewise took the position that if a general foreman discharged an incompetent assistant foreman believing this action to be in the best interests of the Company and the Foreman's Assoication went out on strike because of the discharge the general foreman responsible would be expected to participate (R. I, 758).

He further stated that if the general foreman felt that the strike was unjustified and should attempt to cross the picket line established by the Association, he would be stopped. That a picket line was formed for the purpose of stopping production (R. I, 759-760). He also stated that it would be a serious offense against the Union for a foreman to instist upon working when the Association was ont on strike and would be a violation of union principles (R. I, 760).

How can management function properly if the action of foremen is to be dictated by a union? Did Congress intend such a result?

(iv) *Seniority would control promotion*

A cardinal principle of unionism and of the FAA is seniority (R. I, 384, 544). Mr. Turnbull, one of the officers of the FAA Local at Packard on this matter of seniority testified as follows (R. I, 568-570):

> "Q. Now, Mr. Turnbull, I believe you stated that one of the principles of Unionism was this matter of seniority, did you not?
> A. Yes."

Mr. Dwyer, another foreman witness, when questioned on this matter of seniority, said (R. I, 460):

> "Q. Who decides the matter of ability?
> A. Your own self has a lot to do with it by what you can show.
> Q. And that is decided by the Union or the Company?
> A. That is the question.
> Q. That is quite a big question, isn't it?
> A. You bet, that is why we are here today."

On the matter of seniority the Panel of the N. W. L. B. said (R. III, 2062-2064):

> "In particular, the Panel believes that it would be unfortunate for a government agency to require managements to adhere to a straight seniority rule in making lay-offs, demotions and transfers of foremen. Certainly the principle of rewarding merit and ability requires no apology. This is especially true in the case of executives such as foremen. The efficiency of each foreman determines in substantial measure the efficiency of many men under him and, in some instances, the efficiency of cooperating departments. It may also determine in large measure whether the relations between the company and a rank and file union are harmonious or full of friction and difficulties. Consequently, both the public and the rank and file workers have a strong

interest that the positions of foremen be filled by the most capable men available regardless of their length of service.

The Panel believes that great weight should be attached to the dependence of higher management on the competency of foremen. When the managers of an enterprise select foremen to whom they delegate authority and responsibility they are not relieved of accountability for results. They are expected to pick competent men on whose good judgment and reliability the superior can depend. The Panel calls attention to the fact that foremanships are to considerable extent the seed bed for higher management. Furthermore the men who hold high positions in management are chosen in part for their skill in selecting and developing subordinates into an effective organization. They should be free within broad and reasonable limits to exercise these functions and to select and develop men for greater responsibilities. To require management to follow straight seniority in making lay-offs would seriously restrict the use of foremanships as a developing ground for higher management. It would create serious staff problems of efficiency and morale. *For these several reasons the Panel concludes that, while seniority should be given weight, management must be left to determine for itself the appropriate weight to be assigned to merit, ability and seniority in laying off, demoting, or transferring supervisory employees.* * * *

The reasons which led the Panel to recommend that each management be left free to assess for itself the relative weight to be accorded to seniority, merit, and ability in the case of layoffs, demotions, or transfers apply even more forcibly in the case of promotions. Higher management frequently needs young, aggressive, and energetic men. Furthermore able foremen and assistant foremen of only a few years experience but of exceptional promise are entitled to reasonable opportunities to demonstrate their capacities and to rise to greater responsibili-

> ties. The attachment of excessive weight to seniority in promotions would go far to reduce the drive to excel among the foremen and would limit the opportunity of young men to forge ahead. Its effect upon the quality of management and upon the enterprise and efficiency of American industry would be unfortunate, if not disastrous. The effect on the rank and file would also be undesirable. * * *"

Foremen must be permitted to develop as individuals. Those who have the desire to succeed, who are willing to study and better themselves, should not be held down by those who do not have the desire or ability or the same courage or energy. It would be detrimental to industry and to the country to discourage the ambitious foreman by a system under which he could only advance by passage of time.

Management is constantly looking for good supervisors. Many of the men who now head the various automotive industries came up through the ranks of foremen. It is essential that the best men be selected both for the good of industry and the good of the country. Management must have the responsibility of selecting the managers. It cannot delegate this duty to a union or to a third party. Management would not under such circumstances be in charge of the business, for the organization or person that has control of the promotion of supervisors controls the Company. To force industry to recognize the Foreman's Association would be to force upon industry the principle of seniority and this in turn would ultimately destroy the management structure.

Management has the ultimate responsibility for the success or failure of a business. If it has this responsibility, then it must have the authority and the power to decide as among its supervision who should be promoted. When management loses the uncontrolled right to choose the

managers it cannot be held responsible for the effective production.

This matter of seniority and promotion based on merit and not on popularity goes to the very substance of proper and efficient management. Surely Congress never intended to set up a union in management which would force top management to accept the union's decisions, or the decisions of some outside third party, as to promotion, demotion, transfer or discharge of foremen.

At the Hearings before the House Military Committee on March 1, 1943, shortly after the Board had decided the *Union Collieries* case, *supra*, and when the Committee was considering clarifying the Act for the purpose of nullifying the effect of that case—which action became unnecessary because the Board just at the close of the hearings reversed itself in the *Maryland Drydock* case, *supra*—representatives of industry were called to testify. It was pointed out that since the foreman exercises managerial authority, he must be solely and exclusively responsible to higher management; that the dual allegiance which would arise if foremen were unionized would impair their ability to fulfill their responsibilities to maintain efficiency and discipline of the men under their direction, and that under such circumstances management could not continue to give the foremen such authority any more than the Army could risk granting a commission to one who holds partial allegiance to another country.

It was pointed out that turmoil and confusion would be inevitable; management's policies would not be carried out; reports to management from supervision could not be relied upon; effective leadership would be gone; and the overall result would be the higher cost of the ultimate product. That more men would be required to get out a given production schedule; manpower would be wasted;

and American industry would be forced to change its proven type of shop management.

The importance of foremen in the mass industry and the effect of forced collective bargaining with a union of supervisors was demonstrated at the oral hearing held in connection with this case at Washington on February 27, 1946, where representatives of some of the largest companies in the mass production industry appeared (R. II, 1176-1298). It was the position of these representatives of industry that foremen were the first line of management—a vital cog in the managerial structure of industry—and so important to management that if they could not continue to exercise their present authority because of the union control which would develop through the granting of collective bargaining, it would be necessary to make a far-reaching reorganization of their managerial duties and reduce their status.

These men were not theorizing—they spoke from experience of many years in mass production industries. They knew how mass production is accomplished. They knew what the effect of forced unionism of foremen would be, for they had lived with unionism for years. They are experts in their field and interested in producing goods. If collective bargaining with the foremen would assist in more efficient and orderly running of their manufacturing plants, they would welcome it.

They knew, however, from experience that this would not be the result. They knew that: "The strategy of discipline is not simple. The maintenance of authority hinges upon a delicate complex of human relations."

(*Southern S.S. Co. v. N.L.R.B.*, 316 U. S. 31).

They knew that if their foremen were swept into the union stream, it would mean a disruption of discipline and authority and of the managerial system in industry

that has made this country the greatest producing country the world has ever known. They knew that any forced collective bargaining with the foreman level of management would be detrimental to the foremen because industry would be forced to reduce the status of the foreman; that it would be bad for the country because the necessary reorganization would result in lessened efficiency; that it would increase production costs, thereby increasing the cost of living.

As stated by the National War Labor Board Panel (R. III, 2063):

> "The effectiveness of management requires that it have its own uncontrolled agents to represent it in dealing with the rank and file, just as the rank and file are entitled to have their own uncontrolled representatives for dealing with higher management."

The extent to which the Board has gone in breaking down the power of management to manage is clearly set forth in *Matter of Allis-Chalmers Manufacturing Co.*, 70 N.L.R.B. No. 34 (18 L. R. R. N. 1363), decided in August of this year. The Company transferred certain duties of inspector supervision to a higher level of supervision. An unfair labor practice proceeding was brought before the Board by the inspectors, and the Board decided that the Company had committed an unfair labor practice in divesting the inspectors of certain of their responsibilities and reducing their privileges and wages. The Board ordered that the inspectors be restored to their former positions with the *same responsibilities, privileges, prestige and wages.* Thus, the Board has taken upon itself, because it erroneously decided in the first instance that supervisors are "employees" within the meaning of the Act, the power to dictate to management who its supervisors must be and what their powers, rights and privileges must be. There

can be no denying of the fact that the Board by this decision has assumed the authority to supervise management in connection with its selection of its supervisors. Management cannot continue to manage under such circumstances. It is inconceivable that Congress ever intended that the National Labor Relations Board should have such broad and unlimited power.

Because of the decisions of the Board on this question of enforced unionization of supervisors, management is placed in an intolerable situation. As noted above, the petitioner in this case would be held responsible for statements and conduct of its supervisory employees if hostile to the unions, and also responsible under the case of *Heinz v. N.L.R.B.*, 311 U. S. 514, and other decisions of the Board and courts for statements and conduct that would favor one union against another. Mr. Turnbull, a general foreman and officer of the FAA, testified in the instant case that he would fight the organization of a rival union of foremen in the same manner that the CIO would fight another rank and file union (R. I, 574). Turnbull further stated that if a member of the FAA tried to influence a foreman to join the rival foremen's union, charges would be brought against the member for dual unionization, and he would be dealt with by the Union board (R. I, 576). For example, if an organizational drive was started in the plants of the petitioner to organize another union of foremen, and a foreman sought to recruit members for the new union, what would be the position of the petitioner? Under the decisions of the Board and of this Court, if the petitioner should discharge or discipline the participating foremen, it would be subject to the risk of an unfair labor practice complaint under Section 8(3) of the Act on the ground that the petitioner was discouraging membership in a labor organization. If the petitioner refrained from disciplining the foremen, then

under the authority of the *Heinz* case and other like cases, the petitioner might be liable under an unfair labor charge for encouraging membership in one labor union as against another. The petitioner would be placed in an impossible situation.

It is submitted that it was never the intention of Congress that the Act should be construed to bring about such an absurd situation. The result, of course, stems from the fact that the Board and the lower court in this case determined that supervisors could be, at one and the same time, "employers" and "employees" under the Act.

> *3. The fact that the representative of the foremen in this case is a so-called independent union will not cure the evils resulting from enforced collective bargaining with a unit of management.*

In the instant case the Board found that a unit of foremen would be appropriated if represented by a union not affiliated with a rank and file union. Subsequent to the Board's decision in this case but prior to the hearing in the lower court the Board held, as noted above, in *Matter of Jones & Laughlin Steel Corp.*, 66 N. L. R. B. 386, that the Board was powerless to deny supervisors or any other unit of employees the right to select as a representative any bona fide labor union, whether affiliated or non affiliated.

It is assumed, however, that this case will be considered on the basis that the FAA, the foremen's union that will be represent the foremen of the petitioner is a claimed independent organization.

It is important therefore in considering whether or not Congress could have intended that foremen should be included under the statutory definition of "employee" or whether such foremen would constitute an appropriate

unit "to effectuate the policies' " of the Act to investigate just what the relationship is between the FAA and the larger rank and file unions, and just what pressure will be brought to bear on the officers of the FAA and its members if the respondent is required to collectively bargain with the FAA.

Mr. Keys, the President of the FAA, stated that he has only received moral support from the larger rank and file unions (R. I, 207). This ignores the realities of the situation in the Detroit area, where the CIO is strongly entrenched, and where it completely dominates the rank and file workers of Detroit's mass production industries, including those of the petitioner.

The truth is that if the foremen are held to be an appropriate group for collective bargaining and collective dealing with management, the foremen will be caught in a current of unionism and the labor movement with all that implies and involves. The foremen will be unavoidably arrayed against the management of which they are a part. Sympathetic support by the FAA through union action of the CIO, the rank and file union in the respondent's plants, will unavoidably follow. The FAA will expect and receive sympathetic and active cooperation from the powerful CIO. The strong bond of union feeling and sympathy between the union men and between groups in the labor movement will find expression and action in the conduct of foremen directly against and hostile to management. The following testimony and exhibits throw light on the collaboration between the CIO and the leaders of FAA.

The following circular, addressed to Murray Corporation foremen, was distributed by the CIO on behalf of the FAA, and was "handed out not only by foremen, but by workers too" (R. I, 216). It says (R. I, 202-203):

"Now the time has arrived when the long standing record of unionism at the Murray Ecorse plant is being seriously tested. The Murray Corporation of America is and has been attempting by all means to destroy the union which your foremen have created. Are you as a Union person going to permit the destruction of your Foremen's Union? With your cooperation your foremen will succeed in their struggle for contract rights such as you enjoy. You will be enticed and pressured by the Murray Corporation to weaken the position of the foreman's union. Will you as a Union person be tempted?

"Labor unions up until the formation of the Foreman's Association of America have always had the threat of foremen who would employ scabs demanded when to do so by management in order to weaken the position of a labor union. Since the founding of the Foreman's Association of America labor no longer need worry of foremen who are members of the Foreman's Association of America placing scabs in the jobs of workers who are idle because of a labor dispute.

* * * * * *

"We, the Murray Ecorse foremen, know you won't let us down, and pledge that we will not let you down in disputes which you have in the future."

The following article, printed in large, blackface type, appeared in the "Victory News," an official publication of the UAW-CIO at the Dodge-Chicago plant on March 24, 1944 (R. III, 1527):

"FLASH!! FOREMEN ORGANIZE!

"R. J. Thomas, President of the UAW-CIO, has repeatedly said, 'It's companies like Chrysler that make unions like ours.' Again history is repeating itself. With 14 Chrysler plants under contract to CIO and this big Dodge Chicago union raising a fury to get recognition a new union comes into the picture.

"This union is also organized in all the other Chrysler plants and while their policies are not always in accord with ours of UAW, we wish to welcome them on the true principles of honest unionism.

* * * * *

"We of the UAW-CIO, watch the organizing of this group with interest, and we know if the foremen are organized they will be better equipped to understand our problems and the principles and fact of grievance procedure through union negotiation.

"We wish to stress at this time that our Local 274, and the UAW-CIO, are not affiliated in any way with the Foremen's Association of America. *We do know, however, this union is composed of many former CIO members and that this union was supported (when it organized) by the UAW when it had its fight in Detroit for recognition as a bargaining group.*"

The Michigan State CIO Council, meeting on June 29, 1943, passed and published the following resolution (R. III, 1528):

"WHEREAS: The National Labor Relations Board has refused to grant collective bargaining rights and other rights guaranteed by the Wagner Act to Foremen, and

"WHEREAS, This action is discriminatory, unfair and unjust, now therefore be it

"RESOLVED: That this Convention of the Michigan State CIO Council go on record supporting the fight of the Foremen to establish collective bargaining rights and other rights guaranteed by the Wagner Act, and be it further

"RESOLVED: That copies of this resolution be sent to the Smith Committee, President R. J. Thomas, President Philip Murray and the Foreman's Association of America."

The present attitude of cooperation of the Flint UAW-CIO with the FAA (and this cooperation is certainly more than mere "moral support") is set forth in an article in "The Searchlight," the official publication of UAW-CIO, Chevrolet Local No. 69, Flint, Michigan, issue of March 1, 1945. This article (R. III, 2090) reads as follows:

"FOREMEN'S ASSOCIATION MAKING DEFINITE PROGRESS AT CHEVROLET

"Weak Sisters Slow Tempo of Organization Drive

"By Geo. Carroll

"About 300 Chevrolet Foremen have received credentials as members of the Foremen's Association of America to date.

"However, in a talk with Mr. Kelley, contact man of the association, about a week ago, he stressed the fact that while this is a creditable showing the most difficult phase of organization has apparently been reached.

"In other words, the bottom of the barrel has been reached insofar as mere salesmanship is concerned and from now on pressure will be required to convince the more timid foremen that they will need protection in post-war days, as thousands of well trained young technicians are demobilized.

"I have heard Otto Ramlow talk to some of his foremen as if they were slaves and I wondered if it wouldn't be worth a couple of dollars a month to them to be able to tell that old buzzard to go to h——.

* * * * * *

"I am certain of one thing, however, after the war, when the corporation will be in a frenzy to build cars, this plant is one which no doubt will have strike after strike before G. M. comes to its

senses and any foreman who does not hold a card in the association will be given little consideration by union men.

"If they receive rough treatment they will have no one to blame but themselves.

'Better think it over, any of you foremen who still nourish scabby ideas.

"In other words, 'you better get in, before we begin.' "

The position taken by union representatives at the hearing before the Board fully supports the positio ntaken by the respondent on this matter of collaboration.

Mr. Nelson, attorney for the FAA, stated during the oral argument of this case (R. III, 1221, 1222, 1223):

"Mr. Nelson: I will admit on the record that when the foremen struck, there was a direct and express agreement between us and the responsible CIO leaders that members of the CIO Maintenance and Production Workers Union would not be permitted to take the place of foremen. Now that is a two-way proposition. If we have a strike, we will be called on to say that we don't do the work of the striking men."

* * * * *

"Mr. Houston: Do you have any agreement with the CIO that they will not cross your picket lines?

"Mr. Nelson: That we adjust at each plant in each incident. In certain places, take the Republic Steel, the Maintenance and Production Workers refuse to cross the foremen's picket line. That is a matter of union spirit."

* * * * *

"I am bound to say I hope that I will never hear of a foreman crossing a picket line by anything but agreement. We don't want these foremen to be just mere appearance of union men. The essence of

> union action in a strike is to withdraw labor power and skill from the use of a given employer, and I hope that we won't be faithless in our obligation to our brother workers, and we hope he won't be to us, but as an equal give and take."

It follows that the union leaders of the FAA and the CIO will collaborate to gain their objective. Favors granted must be returned. Furthermore, the dominating party will be the rank and file union for it is only by sufferance that the FAA will be allowed to exist. The officers of the FAA to retain their positions will be forced to carry out the instructions and plan of the CIO. In order to do so, they in turn will be forced to apply the usual formal and informal pressure on the individual foreman in order to comply with the demands of the CIO. Obviously, under such conditions, management would no longer manage through the foreman.

But the rank and file unions will not stop with domination and control of the FAA. The FAA will be absorbed as have other so-called independent unions (R. II, 832, 1091, 1092, 1699).

Consequently, for the purpose of this case, whether through domination or control or through actual absorption of the FAA, the rank and file CIO will represent and be the spokesman for the foreman unit if the Court affirms the Board in this case.

It is submitted, therefore, that it was not proper, would not effectuate the purposes of the Act, is against the public interest, and was an abuse of discretion for the Board to determine, and the lower court to approve, the regimentation of the Packard foremen in a unit for the purpose of collective bargaining.

POINT III

THE CIRCUIT COURT OF APPEALS, AFTER HOLDING THAT THE PETITIONER'S GENERAL FOREMEN, FOREMEN, ASSISTANT FOREMEN AND SPECIAL ASSIGNMENT MEN WERE "EMPLOYEES" WITHIN THE MEANING OF THE ACT AND COULD BE PLACED IN AN APPROPRIATE UNIT, ERRED IN HOLDING THAT THE BOARD COULD PROPERLY INCLUDE SUCH EMPLOYEES IN A SINGLE UNIT FOR THE PURPOSES OF COLLECTIVE BARGAINING

In *Matter of Murray Corporation of America*, 47 N. L. R. B. 1003, and in *Matter of Boeing Aircraft Co.*, 45 N. L. R. B. 630, the Board held inappropriate a unit consisting of several ranks of supervision where each rank exercised authority over the rank below it. The Board then changed its mind and in the Packard case now before the court reversed itself. The Board stated its reasons thus:

> "All four classes of employees are supervisors who perform no manual work, and while they usually function on different levels, their duties and responsibilities are substantially alike. Moreover, it is common for a foreman—like most general foreman—to be in charge of an entire department, and in cases where there are no foremen in a department, an assistant foreman will often serve in a position which corresponds to a foreman's job in another department. In many respects, the Company itself treats these employees as a single group. Thus, substantially all are paid a salary upon the basis of a 40-hour week, with time and one-half for overtime; all four classes attend the Company's Foreman's School, with no distinction whatever between them; all four classes enjoy certain common privileges and advantages such as justifiable absences with pay, vacation with pay, separation pay, the privilege of reporting one half hour late for work without being docked in pay, and all four wear ordinary street clothes at the plant * * *."

The Board might as well have said that these distinct levels of supervision are all members of the human race. If paying people salaries, training them in classes on management, granting them sick leaves and vacations, not docking them for time off for tardiness, the fact that they wear street clothes, and substitute for each other in case of absence are valid considerations in determining a unit, then, the Board's criteria for determining what units will "effectuate the policies of the Act * * *" are strangely unrelated to the purposes of the Act.

A general foreman of the petitioner, as shown by the record, has supervision over the foremen and assistant foremen below him and has the power to recommend their discharge, advancement or demotion (R. I, 564, 642, 610, 646, R. II, 999). The recommendations of the general foremen are usually carried out (R. II, 955, 999). This is necessary as a practical matter, for it is the general foreman who is directly in contact with the foremen and assistant foremen and the only management representative who is in position to judge their capabilities and actions.

The Board would place the 125 general foremen of the petitioner in the same unit with approximately 1,000 foremen and assistant foremen (R. III, 1814, 1815). What chance would the conscientious general foreman have under such conditions, where they could be outvoted almost 10 to 1? A general foreman would be regimented in a unit of the very men over whom he has for all practical purposes the power to promote, demote, discipline and discharge.

The general foremen were given no opportunity to decide whether they desired to be placed in the same unit with the men they supervise (R. III, 1821). Out of the votes counted, which did not include the challenged votes, 666 voted in favor of the FAA and 435 against (R. III, 1835). It is impossible to determine how many of the general foremen voted against the FAA.

It can hardly be said to be fair or democratic to regiment the general foremen into such a unit without giving them a voice in the matter; to herd them willy-nilly into an organization without permitting them to express themselves.

For the same reasons set forth above, foremen should not be included in the same unit with the assistant foremen, or at least should be given an opportunity to voice their desires in the matter. This was done in the recent case *Matter of Kelsey-Hayes Wheel Co.*, 66 N. L. R. B. 76 (March 11, 1946), where the Board permitted general foremen to vote on the question of whether they desired to be included in the same unit with the foremen and assistant foremen they supervise. The Board's records will disclose that there were approximately 114 foremen and 29 general foremen and that the general foremen voted 23 against the FAA and only 4 in favor of the FAA.

The Board cites as authority for its action certain cases involving the printing and maritime trades. The record is barren as to the duties and responsibilities of the supervisors in those trades. Member Reilly in his dissenting opinion in the instant case (R. III, 1883-1884) as hereinbefore noted, pointed out that these examples have little relevancy to the present controversy, and that the pattern of collective bargaining established in them grew up independently of the Act, and in certain respects quite contrary to its basic concepts.

In *Matter of Soss Manufacturing Co.*, 56 N. L. R. B. 349, 357, the Board said:

> "The express purpose, of course, for which foremen and other supervisory officials are hired is to represent management in its relation to production workers. In such situation, management is, of course, entitled to the undivided allegiance of the foremen, which implies such foremen being free from the orders and directions of organizations

> composed primarily of subordinate employees. By the same token, it should be implied that the general foremen and all foremen should be free from the orders and directions of the foremen or assistant foremen which they supervise."

The following paragraph taken from the Railroad Workers Journal and quoted by Member Reilly in his dissenting opinion in *Matter of Jones & Laughlin Steel Co.*, 66 N. L. R. B. No. 51, deserves attention:

> "Just picture a foreman, who is just an ordinary member of his union, getting into an argument with the president or business agent of his own union in a meeting. I would venture to say that his union status would not be so good, and if it is not according to union contract under the closed-shop system, he can be expelled for union insubordination. If he is expelled from the union, he is automatically expelled from the company. A nice system of eliminating the conscientious foremen."

It goes without saying that not only would conscientious foremen be eliminated, but the whole function of foremen as part of supervision would cease to exist.

In the case of *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 146 F. 2d 718, this Court had before it the question of representation of a unit consisting of plant guards. The Court pointed out that in case an election is held under the Act, the Board should consider the will of the majority of the employees but the result of the election would not altogether conclude the matter. The Court cites in that connection the case of *N.L.R.B. v. Delaware, New Jersey Ferry Co.*, 128 F. 2d 137, where the Court said:

> "* * * But the point here is not what the officers want nor what the men want nor what the company either wants or is willing to acquiesce in, but rather what is the public interest."

The Court then pointed out that if the guard unit is to be represented by the rank and file union the guards

"might in their effort to discharge their duty to their employer find themselves in conflict with other members of their union over the enforcement of some rule or regulation they were hired to enforce * * *. We think that the imposition of such strains upon personal allegiance and personal interest would undoubtedly be detrimental to the public interest and to the freeflow of commerce."

If the general foremen are regimented into one unit, there would be the same result, for in their effort to discharge their duty to their employer, the petitioner in this case, with respect to the discipline, promotion, demotion or discharge of the foremen or assistant foremen under their supervision, they will find themselves in conflict with these other members of the union over the exercise of their responsibilities and duties. The "imposition of such strains upon personal allegiance and personal interest would undoubtedly be detrimental to the public interest and to the free flow of commerce."

If any unit for foremen were "appropriate" it could only be so if each level constituted a separate unit and was represented by a separate organization unit, with no obligations to others, and subject to no domination by them or by the rank and file.

CONCLUSION

It is respectfully submitted that the judgment of the Circuit Court of Appeals for the Sixth District should be reversed and that the Court be directed to enter an order dismissing the petition for enforcement filed by the National Labor Relations Board in this case.

Respectfully submitted,

LOUIS F. DAHLING,
(BODMAN, LONGLEY, BOGLE, MIDDLETON, & ARMSTRONG),
1400 Buhl Building,
Detroit 26, Michigan,
Attorney for Petitioner.

APPENDIX A

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151 *et seq.*) are as follows:

FINDINGS AND POLICY

Section 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right to employees to organize and bargain collectively safeguards commerce from injury, impairment, or inter-

ruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SECTION 2. When used in this Act—

* * * * * *

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any indi-

vidual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(9) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

SECTION 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SECTION 8. It shall be unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to Section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII,

title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (or any agency established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SECTION 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under Section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to Section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this Section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

SECTION 10. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the

pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to aduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States and upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

No. 658

PACKARD MOTOR CAR COMPANY,
a Michigan corporation,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

---

REPLY BRIEF OF PETITIONER, PACKARD MOTOR CAR COMPANY

LOUIS F. DAHLING
(BODMAN, LONGLEY, BOGLE, MIDDLETON & ARMSTRONG),
1400 Buhl Building,
Detroit 26, Michigan,
Attorney for Petitioner.

Interstate Brief & Record Co., Cass Bldg., 457 Fort St. W., Detroit 26, Mich.

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REPLY BRIEF OF PETITIONER, PACKARD MOTOR CAR COMPANY

PRELIMINARY STATEMENT

This typewritten reply brief is filed pursuant to permission granted by the Court at the conclusion of the hearing before the Court on January 9, 1947.

ARGUMENT

POINT I

REPLY TO RESPONDENT'S CONTENTION THAT SUPERVISORY EMPLOYEES CAN BE BOTH EMPLOYERS AND EMPLOYEES UNDER THE ACT

The respondent plainly disregards the language of the National Labor Relations Act and the intent of Congress in maintaining that the supervisors of the petitioner are both employers and employees under the Act.

The Act (Section 2) *does not* define an *employee* as including persons who act directly or indirectly in the interest of the employer. It defines an *employer* in that manner and after thus defining an employer and carving out of the employee class those employees who thus act directly or indirectly for an employer, proceeds to the definition of an employee.

The respondent completely disregards the provisions of Section 7 of the Act.

The fundamental purpose of the Act as stated by Congress in Section 7 is to eliminate interference with interstate commerce by providing for collective bargaining between *employer* and the *employees*. In Section 7, Congress sets forth the rights which "employees" under the Act must have in order to effectuate such purpose. Section 7 reads as follows:

> "*Employees* shall have the right to *self-organization*, to *form*, *join*, or *assist labor organizations*, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining, or other mutual aid or protection."

This Court and other courts have held that this right given by Congress to those who are *employees* under the Act "to form, join, or assist labor organizations" is a "complete and unfettered freedom of choice." *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 588.

The provisions of Section 7 relate to and are granted to all persons who are "employees" under the Act. Counsel for the respondent at the hearing before the Court admitted that under the respondent's interpretation of the Act every member of the managerial hierarchy of the petitioner is an "employee." This would include the president and the vice-presidents, as well as the foreman level of management. If the respondent is right, then the president, the vice-presidents, as well as the supervisors of the petitioner, must have the same "complete and unfettered freedom of choice" as the rank and file or non-supervisory employees, "to form, join, or assist labor organizations," for this is the right given by Congress to all "persons" who are "employees" under the Act.

This right would include, of course, the right to foster their own union and oppose activities of rival organizations. The respondent Board has never denied that the rank and file worker has this right.

This Court, other courts, and the respondent, however, have held without exception that supervisory employees do not have such freedom; that they do not have "complete and unfettered choice" to join and assist labor organizations.

The lower court in this case said (R. III, 2103):

> "Moreover, the Board and the courts have repeatedly held that the foreman acts for his employer to such an extent that his statements and conduct, if hostile to the union, make the employer liable under

an unfair labor charge. *International Association of Machinists v. National Labor Relations Board*, 311 U. S. 72; *National Labor Relations Board v. Marquette Metal Products Co.*, 152 F. (2d) 964 (C. C. A. 6); *National Labor Relations Board v. Link-Belt Co.*, 311 U. S. 584, 598. This is true even though the employer has not authorized such statements or conduct. *Matter of Tenn-Copper Co.*, 9 N. L. R. B. 117, 118; *Matter of Inland Steel Co.*, 9 N. L. R. B. 783, 808; *Matter of American Steel Scraper Co.*, 29 N. L. R. B. 939, 943; *Matter of Schult Trailer, Inc.*, 28 N. L. R. B. 975, 993. In *Matter of Emsco Derrick & Equipment Co.*, 11 N. L. R. B. 79, 87, the Board significantly declared: '* * * the supervisor acts as an agent for the employer, and his acts are necessarily those of the employer unless effectively disavowed.' The same doctrine was emphatically declared in *H. J. Heinz Co. v. National Labor Relations Board*, 311 U. S. 514, in which the employer was held responsible although it had not proposed or stimulated the formation of a plant union. The court held the employer responsible for unauthorized activities of supervisory employees, not upon the principle of agency or *respondeat superior*, but under the broad provisions of the Act condemning such activities as constituting an unfair labor practice.

"Likewise the membership of foremen and supervisory employees in an independent or plant union has repeatedly been held by the Board to constitute evidence of employer domination calling for the disestablishment of the independent or plant union. * * *"

There can be no quarrel with the position taken by the courts because when supervisory employees attempt to exercise the rights given "employees" who are under the Act—the rank and file workers—they would, as the courts have held, coerce and restrain the freedom of the workers guaranteed by Section 7 of the Act.

It must follow that if the actions of supervisors in engaging in activities on behalf of or against labor organizations are imputable to the petitioner, then the petitioner must have the right to discipline or discharge such supervisory employees to protect itself, and the respondent has so held in *Matter of E. Anthony & Sons, Inc.*, 70 N. L. R. B. No. 57 (Aug. 29, 1946) and *Matter of Wells, Inc.*, 68 N. L. R. B. No. 78 (June 12, 1946).

If, however, the supervisors are "employees" under the Act, the action of the petitioner in disciplining or discharging them as aforesaid would be a direct violation of their rights as such "employees" to "form, join and assist labor organizations" given them by the express language of Congress in Section 7 of the Act.

Manifestly, neither the respondent Board nor the courts have the power to take from any employee who is an "employee" within the meaning of the Act, the rights, powers and privileges given by Congress to such "employees."

It must follow that the supervisors of the petitioner are not "employees" within the meaning of the Act.

POINT II

REPLY TO RESPONDENT'S POSITION THAT ALL THE COURT NEED CONSIDER IS WHETHER BOARD'S DETERMINATION THAT FOREMEN ARE "EMPLOYEES" WITHIN THE MEANING OF THE ACT HAS "WARRANT IN THE RECORD" AND HAS "A REASONABLE BASIS IN LAW"

The Board cites *N. L. R. B. v. Hearst Publications*, 322 U. S. 111, in support of its position. As demonstrated in the original brief (pp. 48-49) and the brief of Carnegie-Illinois Steel Corporation, as *amicus curiae*, this decision when read in connection with the facts, does not support the Board.

It is a fundamental rule of law that questions of statutory construction are for the courts to resolve. No administrative agency has the unlimited authority to determine its own jurisdiction.

The Board treats the Act as remedial legislation that must be liberally construed to accomplish its purpose and freely indulges in inferences and presumptions. Every act of the legislature in a certain sense is of course remedial legislation. But any legislation which changes the common law must clearly indicate that it was the intention of Congress to make such a change.

The National Labor Relations Act is in derogation of the common law and therefore should be strictly construed and not held to cover situations and persons not clearly within its language.

As was stated by the Court in *Texas and Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 437:

> "* * * a statute will not be construed as taking away a common law right existing at the time of its

> enactment unless the result is imperatively required."

This case involved the construction of the Interstate Commerce Act, which was just as much remedial legislation as the National Labor Relations Act.

In *Thompson v. Thompson*, 218 U. S. 611, the court said (p. 618):

> "It must be presumed that the legislators who enacted this statute were familiar with the long-established policy of the common law, and were not unmindful of the radical changes in the policy of centuries which such legislation as is here suggested would bring about. Conceding it to be within the power of the legislature to make this alteration in the law, if it saw fit to do so, nevertheless such radical and far-reaching changes should only be wrought *by language so clear and plain as to be unmistakable evidence of the legislative intention.* * * * *it would have been easy to have expressed that intent in terms of irresistible clearness.*"

In *United States v. Masonite Corp.*, 316 U. S. 265, the Court said (p. 280):

> "Congress has provided that a patentee shall have the 'exclusive right to make, use and vend the invention or discovery' for a limited period. 46 Stat. 376, 35 U. S. C. §40, 35 U. S. C. A. §40. But the *scope of the right* to 'vend' *cannot be determined by reference to the private law of sales alone.* Since patents are *privileges restrictive of a free economy*, the rights which Congress has attached to them must be strictly construed *so as not to derogate from the general law beyond the necessary requirements of the patent statute.*"

In *Scharfeld v. Richardson*, 133 F. (2d) 340 (U. S. Ct. of App., D. C., 1942), the Court said (p. 341):

> "The suggested construction would change the common law rule. No explicit provision for such a change is contained in the Act. *The courts have consistently held legislation derogative of the common law accountable to an exactness of expression, and have not allowed the effects of such legislation to be extended beyond the necessary and unavoidable meaning of its terms.* The presumption runs against such innovation. This is merely a familiar principle of statutory construction."

Numerous other cases might be cited, but the rule is so universal that further citation of authority is not considered necessary.

It cannot be questioned that the Act is in derogation of the common law rights of not only the employer, but also of the employee. Under the common law the employer had a right to contract with his individual employees and the individual employees had a right to contract for their services with the employer. The Act does away with these contract rights and brings about an arrangement for collective bargaining in which employees, even though they may not wish to be, are represented and their rights fixed in a contract entered into by representatives selected by a majority of a unit which is fixed by a third party, to-wit: the Board. Many of the employees so represented may not desire either to be represented or to be represented by the representatives certified by the Board. Thus in this case 435 foremen out of approximately 1100 voted against representation by the union. Unfortunately, the foremen in this case who wish to remain independent must be inarticulate, for there is no provision in the Act which gives them an opportunity to be heard in the protection of their legal rights as individuals.

The act, therefore, not only restrains and prohibits both the employer and the employee from exercising their com-

mon law rights, but forces the employee to cast his lot with the unit and an unwanted representative.

If the foregoing rule of statutory construction is applied in this case, supervisory employees cannot be held to be employees within the meaning of the Act. Such construction certainly is not required by clear and unambiguous language of the Act. On the contrary, as set forth in petitioner's original brief, the language of the Act clearly demonstrates that it was not the intention of Congress to include such supervisory employees within the coverage of the Act.

CONCLUSION

It is respectfully submitted that the enforcement of the Board's order should be denied by this Court.

Respectfully submitted,

LOUIS F. DAHLING
(BODMAN, LONGLEY, BOGLE, MIDDLETON & ARMSTRONG)
1400 Buhl Building,
Detroit 26, Michigan,
Attorney for Petitioner.

ERRATA:

In the petitioner's original brief on pages 61 and 65, it is stated that *Matter of Maryland Drydock Co.*, 49 N. L. R. B. 733, was decided by the Board on May 11, 1934. This case was actually decided by the Board of May 11, 1943.

NOV 26 1946
CHARLES ELMORE CROPLEY

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In the Supreme Court of the United States

OCTOBER TERM 1946

PACKARD MOTOR CAR COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

In the Supreme Court of the United States

OCTOBER TERM 1946

No. 658

PACKARD MOTOR CAR COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

While we believe that the decision below is correct, we agree with petitioner that it presents an important question which has not been but should be decided by this Court. We therefore join with petitioner in requesting that a writ of certiorari issue to review the decision below. The remainder of this memorandum is devoted solely to clarification of some of the matters involved so that this Court may be fully advised as to the Board's position.

The first question raised by petitioner is whether its foremen are employees within the meaning of the Act (Pet. 7). On this issue the Board and every court which has passed on the

subject have been unanimous. See cases cited in the Board's decision (R. III, 1793–1794), and particularly *Matter of Sioss Mfg. Co.*, 56 N. L. R. B. 348.

The issue on which the Board has divided (Pet. 14) is whether the Board should hold that foremen do not fall within any unit appropriate for the purposes of collective bargaining. The effect of such a holding would be to exclude foremen from the protection of Section 8 (5) of the Act, which requires employers to bargain collectively with properly chosen employee representatives. In *Matter of Maryland Drydock Co.*, 49 N. L. R. B. 733, the Board reversed an earlier line of decisions and held that it should exclude the foremen there involved from any appropriate bargaining unit. In the instant case the Board overruled that decision and held that, assuming that it had power to withhold the protection of Section 8 (5) from foremen, it would not do so here. In a subsequent decision, the Board went further and held that it had no power to deprive supervisory employees of statutory bargaining rights by holding that they could not constitute an appropriate bargaining unit. *Matter of L. A. Young Spring & Wire Corp.*, 65 N. L. R. B. 298. We shall urge upon this Court, as in the court below, both that the Board does not have the power to exclude employees from all bargaining units which it purported to exercise in the *Maryland Drydock* case

and declined to exercise in the instant case, and that, assuming that it has such power, it was not an abuse of its discretion to refuse to exercise it here.

For the reasons stated, the Board does not oppose the granting of the writ of certiorari as prayed in the petition.

Respectfully submitted.

GEORGE T. WASHINGTON,
Acting Solicitor General.

GERHARD P. VAN ARKEL,
General Counsel,
MORRIS P. GLUSHIEN,
Associate General Counsel,
RUTH WEYAND,
JOSEPH B. ROBISON,
Attorneys,
National Labor Relations Board.

NOVEMBER, 1946.

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OCTOBER TERM, 1946

PACKARD MOTOR CAR COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 658

PACKARD MOTOR CAR COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinions in the court below (R. III, 2096–2108, 2127–2128) are reported at 157 F. 2d 80. The findings of fact, conclusions of law and order of the Board (R. I, 30–39) and the intermediate report of the Board's trial examiner which the Board adopted by reference (R. I, 19–29) are reported at 64 N. L. R. B. 1212. The decision of the Board in a prior representation proceeding which forms a part of the record in this case (R. III, 1791–1834) is reported at 61 N. L. R. B. 4.

JURISDICTION

The judgment of the court below decreeing enforcement of the Board's order was entered on August 12, 1946 (R. III, 2095), and a petition for rehearing filed by the Company was denied by the court on September 30, 1946 (R. III, 2127). The petition for a writ of certiorari was filed on October 30, 1946, and was granted on December 9, 1946 (R. III, 2129). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the Board could properly determine that the Company's general foremen, foremen, assistant foremen, and special assignment men are employees within the meaning of the National Labor Relations Act.

2. If the above question is answered in the affirmative, whether the Board could properly determine that the Company's general foremen, foremen, assistant foremen, and special assignment men may be included within some unit which would be appropriate for the purposes of collective bargaining under the Act.

3. If the preceding questions are answered in the affirmative, whether the Board's determination that the Company's general foremen, fore-

men, assistant foremen, and special assignment men constitute a single unit appropriate for the purposes of collective bargaining was a proper exercise of the Board's discretion.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set out in Appendix A, *infra*, pp. 115–122.

STATEMENT

1. THE BOARD'S FINDINGS IN THE REPRESENTATION PROCEEDING

Pursuant to a petition for investigation and certification of representatives filed by Foreman's Association of America, an unaffiliated labor organization established for the purpose of representing supervisory employees exclusively in collective bargaining, herein called "the Association" (R. II, 1299–1300), the Board conducted a hearing[1] and, on March 26, 1945, issued its Decision and Direction of Election (R. III, 1791–1821), in which it found (R. III, 1820) that "all general foremen, foremen, assistant foremen, and special assignment men employed by the petitioner Company at its plants in Detroit, Michi-

[1] Following the close of the hearing before its Trial Examiner, the Board, "in view of the importance of the question raised in the case" (R. III, 1792), heard oral argument on behalf of the Company, the petitioning union, and numerous other interested employer and employee groups (R. II, 1176–1298).

gan, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act," and that a question affecting commerce existed concerning the representation of these employees (R. III, 1796).

The subsidiary findings of the Board and the supporting evidence may be summarized as follows: [2]

(a) The Company's operations

The Company's manufacturing operations in Detroit are housed in 117 buildings, all but two of which are located on an 84-acre tract (R. III, 1796, 1814; II, 860, 791–793, 799). In these buildings there are approximately 32,000 rank and file employees (R. III, 1815; II, 798–799). Since 1937 these employees have been represented for the purpose of collective bargaining with the company by the United Automobile Workers of America, affiliated with the Congress of Industrial Organizations, hereinafter referred to as the UAW–CIO (R. III, 1800–1801; I, 403, II, 813, III, 1409–1420).

(b) The Company's supervisory hierarchy

To perform the work of supervising the productive operations of these rank and file employees, the Company employs approximately

[2] References preceding the semicolon are to the Board's decisions; succeeding references are to the supporting evidence.

125 general foremen, 643 foremen, 273 assistant foremen and 65 special assignment men (R. III, 1815; II, 801, I, 80, III, 1322). These more than 1100 employees, constituting the unit found appropriate by the Board, are in turn subject to the supervision and control of the Company's managerial hierarchy.[3]

The Company's manufacturing operations, headed by the Executive Vice President and Vice President of Engineering, are divided into two principal divisions, the Aircraft Engine Division and the Car and Marine Engine Division (R. III, 1814; II, 801, 807, 810–812, 942–943, 946–947).

[3] The chain of authority is fully charted in Company Exhibits 22, 22A–22J, 23A–23I (R. II, 802–807, III, 1479–1498). The chart set out below summarizes the information therein contained (R. III, 1814–1815):

Title	Number
President	1
Executive Vice President	1
Vice President of Engineering	1
Manager of Aircraft Engine Plant	1
Assistant Manager of Aircraft Engine Plant	1
Night Superintendent Aircraft Engine Plant	1
Asst. Superintendent Aircraft Engine Plant	1
Manager of Car and Marine Engine Plant	1
Executive Assistant Car and Marine Engine Plant	1
Managers of Divisions (Includes Master Mechanic—Plant Engineer—Chief Inspector)	16
Assistant Managers of Divisions (Includes Assistant Master Mechanic—Assistant Plant Engineer—Assistant Inspectors)	32
Superintendents of Divisions (Some Superintendents as shown by the Charts have the same jurisdiction as Managers or Assistant Managers)	20
General Foremen	125
Foremen	643
Assistant Foremen	273
Special Assignment Men	65

Each of these divisions is headed by a plant manager and an assistant plant manager (R. III, 1814–1815; II, 942–943). Subdivisions of these major divisions are headed by 16 managers, 32 assistant managers, and 20 superintendents (R. III, 1815; II, 943–945, 802–807, III, 1479–1498). The subdivisions, under the supervision of managers or superintendents, consist of a number of individual departments (R. 1815; II, 944–946).

(c) The duties and status of the Company's foremen

General foremen and subordinate foremen operate under the superintendents on the individual department level (R. III, 1815; I, 306, 331–332, 432, 499, II, 737–738, 802). While general foremen are in some cases in charge of a single department, in other instances they are in charge of as many as four departments (R. III, 1815; II, 802–803, III, 1484, I, 331–332, 432–435, 499). In such cases, a foreman or assistant foreman is usually in charge of each of the departments under the supervision of the general foreman (R. III, 1816; II, 802–807, III, 1479–1498, I, 448).[1] When the general foreman is in charge of a single department the foreman and assistant foremen under him either supervise the

[1] In some instances, a foreman is in charge of one or more departments under the direct supervision of a manager or superintendent. E. g., R. III, 1485 (Coon), 1492 (Endres), 1493 (Curtis).

work of specific segments of the department, such as subassembly lines, or act as his aides in connection with the work of the entire department (R. III, 1815–1816; I, 514, 287–288, 498, 587, 656–657, II, 802–807, III, 1479–1498). Some departments are headed by assistant foremen who report directly to the general foremen and perform the same function as do foremen in other departments (R. III, 1815; I, 287–288, 587, 606, II, 802–807, III, 1479–1498). Other departments are directly supervised by foremen without assistant foremen (R. III, 1815; I, 514, II, 802–807, III, 1479–1498). Special assignment men sometimes substitute for absent general foremen or foremen but their special role is that of "trouble-shooter" (R. III, 1815, 1817; I, 576–583, 635–638, 646). As such they investigate and unravel snarls in production lines wherever they develop, without regard to departmental boundaries (R. III, 1817; I, 577, 581, 635–638). On these occasions they exercise authority comparable to that of a general foreman or foreman (R. III, 1817; I, 515, 579, 581, 583, 645–646).

The foremen as a group are highly paid (R. III, 1816, 1817; II, 813, 843).[5] With the exception of a few assistant foremen who are paid on an hourly

[5] The company generally selects its assistant foremen from among the rank and file employees; its foremen from the ranks of assistant foremen; and its general foremen from the ranks of the foremen (R. I, 563–564, II, 812–813).

basis, the foremen are all paid a monthly salary based on a 40-hour week (R. III, 1816; II, 813–814, I, 373, 514, 515–516). All receive additional payment for overtime (R. III, 1816; II, 815–820). The salary range for general foremen is from $280 to $375 per month, for foremen from $220 to $370 per month, and for assistant foremen from $220 to $315 per month (R. III, 1816; II, 814). The salary of individual foremen within these ranges depends upon the type of work done in the department in which the foreman acts as supervisor. The foremen who supervise skilled employees are more highly paid than those who supervise semi-skilled workers (R. III, 1816; I, 421–422, 580–581, II, 814). The salary range for special assignment men is the same as the range for general foremen or foremen, and the rate they receive depends upon their skill and qualifications (R. III, 1816; I, 515, 579–580).

In other respects as well as the form and amount of wages, the foremen are treated by the Company as a group apart. Unlike ordinary employees, foremen are paid for justifiable absences and for holidays; they are not docked in pay for reporting to work late; they receive longer paid vacations, and are given severance pay upon release by the Company (R. III, 1817–1818; I, 516, II, 822–825, III, 1506–1510).

General foremen instruct and supervise the work of the foremen and assistant foremen under them, and are empowered to recommend changes in their terms and conditions of employment, such as rates of pay, transfer, lay-off, promotion, discharge or discipline (R. III, 1816, 1818; I, 301–302, 332–334, 517, 523–526, 564–565, 584–596, 610). Foremen sometimes exercise similar powers over assistant foremen (R. III, 1817; I, 517, 587, 593). The authority of the general foremen and foremen over the lower ranking supervisors is limited to the making of recommendations (R. III, 1818; I, 299–302, 333–334, 398, 523, 564). Final decision on all of these matters rests in the hands of higher ranking management representatives (R. III, 1818; I, 301–302, 333–334, 398, 564, 593–594, 605–606). This is true even with respect to the adoption of suggestions for improvement in methods of production. A general foreman is not empowered to put such suggestions from a foreman or assistant foreman into effect. He can only report them, together with his own recommendations, to the superintendent or division manager, who, in turn, must take the matter up with the planning, lay-out, or other staff department involved (R. III, 1818; I, 374, 605–606, II, 935, 937, 982, 1019–1024, 1143–1146).

For several years, the Company has conducted an in-service school for foremen which all ranks

of foremen attend (R. III, 1817, 1819; I, 374–383, 419, 512; II, 825–827). All grades of foremen attend the same classes and participate equally in the conference program (R. III, 1817, 1819; I, 374–383, 512, 517–518; II, 825–827). The subjects discussed cover a wide range including such matters as administration of the UAW-CIO contract, elimination of waste, and prevention of industrial accidents (R. III, 1817; I, 408, III, 1425–1428).

The duties and status of the company's foremen are typical of the duties and status of foremen in mass production industry generally (R. III, 1798–1802, 1816–1817; III, 1763, 1869–1878, 1900–1914). The foreman has no authority to make decisions or take action on such matters as the discharge, transfer, lay-off or reclassification of the employees under his supervision (R. III, 1801; I, 299–301, 319–320). The foremen are initially responsible for maintaining the quantity and quality of production achieved by the workers under their supervision at specified standards set by higher management (R. III, 1799, 1816; I, 299, 311, 331–332, 513–514, 603, II, 713–714). But the necessity of coordinating production among hundreds of departments requires that in performing this function the foremen be constantly subject to supervision and control, and that they adhere to detailed policies and for-

malized procedures prescribed from above (R. III, 1799; I, 301–302, 309–310, 506–507, 526–527, 535–539, 584–585, 588, 603, II, 737–738, 988). Thus, with respect to such matters as enforcing company rules, the foremen are provided with forms to fill out and with a detailed list of penalties to be applied in cases of specific types of violations (R. III, 1800, 1816–1817; I, 404, III, 1421–1422, I, 419–421, 535–539). The foremen must report in writing to their superiors any failure to achieve the requisite production and any steps taken to correct the cause of such failure (R. III, 1799, 1816–1817; I, 529–530, 541, 588–589, 622, II, 988). These reports, as well as recommendations for promotion, demotion, discipline, or transfer of rank and file employees, and employee passes of various kinds, are filled out by the foremen on routine forms supplied by higher management (R. III, 1799, 1801, 1817; I, 300–302, 319, 336–362, III, 1463–1474, I, 402–403, III, 1405–1408, I, 505–506, 528–529, II, 951).

Numerous service departments which exist for the purpose of maintaining production and correcting specific operating maladjustments further narrow the foremen's responsibility. Hiring of employees is done by the labor relations department as is the discharging and laying-off of employees; the lay-out of machinery, tools, and equipment is

the responsibility of the lay-out department; work is scheduled by the scheduling department; stock is moved between departments by the stock department; piece work rates are set by the time study department in conference with the UAW-CIO; the quality of items being produced is checked by the inspection department; and mechanical breakdowns are repaired by the maintenance department (R. III, 1799–1801; I, 299, 300, 311, 313, 530, 539–541, 562, 618-625, 626, 631–633, II, 715–716, 988–989).

The contract between the UAW-CIO and the Company, in the negotiation of which the foremen, of course, play no part, further canalizes the relations of the foremen with the rank and file employees (R. III, 1799–1801; I, 403, 510, III, 1409–1420). Not only does the contract define the penalties which a foreman may recommend in cases of violation of company rules, but the foreman's written recommendation itself is submitted to the UAW-CIO steward for approval before the penalty is imposed and the report forwarded to the labor relations department (R. III, 1800–1801; I, 299–302, 320–321, 322–323, 334–335, 341, 345, 404, III, 1421–1422, I, 533–535, 508–509). If the steward refuses to approve the foreman's recommendation the accused employee is given a hearing before a committee composed of UAW-CIO and management representatives (R. III, 1801; I, 299, 320, 338–339,

II, 986). The contract further provides a grievance procedure whereby employee grievances, except those involving "company policy," are submitted by the UAW-CIO's departmental stewards to the foremen and if possible settled between them (R. III, 1801; I, 323, 403, III, 1410–1411). Grievances involving "company policy," however, are not referred to the foremen; they are referred directly by the UAW-CIO's district steward to designated officials in the company's labor relations department (R. III, 1801; I, 323, 403, 404–406, III, 1410, 1423).

In sum, the foremen in this plant, typical of modern mass production industry, no longer even resemble the foremen of the early 1900's who were masters in their own departments and who exercised plenary authority over their subordinates (R. III, 1798; 1899–1916, I, 648, 659, 661, II, 682, 685–688, III, 1763, 1900–1913).

(*d*) *Organization of the Foreman's Association of America*

Spurred by resentment over their loss of prestige and authority, and by the growing realization of their own job insecurity and individual weakness in dealing with management, particularly when contrasted with the bargaining power wielded by the rank and file through their labor organizations, foremen determined to enhance their bargaining

position through collective action (R. III, 1802–1803).[6]

Early in 1942, a group of foremen employed at the River Rouge plants of the Ford Motor Company met and organized the first chapter of the Foreman's Association of America (R. III, 1803; 1763,

[6] Several of the Company's foremen testified concerning their reasons for joining the Association and the objectives they hoped to secure through collective bargaining. Paramount among the reasons advanced were the desire to obtain representation and an effective voice in dealing with management concerning grievances, ability to resist arbitrary action by management in such matters as classification, layoff, and demotion, and opportunity to participate in the formulation of the rules under which they work (R. I, 290–291, 443, 456–457, 459, 508–509, 547, 664–667, 671, II, 696–701, 822, 842). Illustrative of the conditions which obtain absent collective bargaining is the fact that when any of the company's foremen are called before management to face charges of misconduct, they are not permitted to have a representative present (R. II, 1016–1018); foremen are not consulted in the formulation of the shop rules which govern their conduct as well as that of the rank and file, although representatives of the rank and file participate equally with management in the formulation of those rules (R. II, 1015–1016); and foremen are not consulted in the formulation of the rules governing the terms of their employment, such as overtime and vacation pay (R. I, 291–292, II, 821–822). The panel appointed by the National War Labor Board on May 31, 1944 (R. III, 1885), to consider the grievances of foremen, which had provoked numerous work stoppages detrimental to the war effort, commented as follows with respect to the adequacy of existing grievance procedures available to foremen (*The Foreman's Cases*, 26 War Lab. Rep. 644, III, 2068–2069):

"The Panel considers procedures for settling grievances individually through ordinary channels of authority to be

1878–1886, I, 61–77). The Association, formed for the purpose of representing foremen in collective bargaining, grew rapidly and spontaneously, first among foremen in the Detroit area, and later among

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inadequate. The insistence by management that its representatives will deal with each foreman only individually and then only about his own grievances impedes, if it does not preclude, the initiation of grievance cases affecting groups of foremen. But even in his own behalf a single foreman may be at a disadvantage in presenting his case. Being one among many, the foreman is individually dispensable and replaceable. He is too far down the management ladder to influence policy or to argue effectively against superiors. He is at a disadvantage in questioning the decisions, rules, and policies of his superiors. Too often, he is in the position of requesting a superior to reverse a decision which the superior himself has made and which the superior may be reluctant to change. Alternatively the foreman may be in the position of requesting his superior to press his case for changes in the decisions, rules, or policies determined higher up in management. Such a superior would naturally be hesitant in pressing the case of a subordinate before reluctant higher officials, especially if doing so were to imperil his own position. If the foreman appeals his own case over the head of his immediate superior, he runs the risk of jeopardizing his relations with the man under whom he must work. The numerous steps through which the individual must appeal a grievance for final adjudication are in some cases sufficient to exhaust the perseverance of the foreman and to compromise his standing in the company."

It is significant to note, in connection with the recommendations of this panel, that the resolution pursuant to which it was created precluded the panel from considering the question whether supervisory employees should be granted collective bargaining rights, that question being deemed subject to the exclusive jurisdiction of the National Labor Relations Board (R. III, 1763, 1855, 2075).

foremen employed in many major industries throughout the United States and Canada (R. III, 1803; 1390, I, 77–106).[7]

These efforts to achieve collective bargaining, however, were generally resisted by employers (R. III, 1803).[8] The refusal by employers to recognize and bargain collectively with the Association on behalf of the foremen provoked many foremen, including those employed by the company, to strike for recognition (R. III, 1803–1804; I, 55–58, II,

[7] Foremen employed by the Company were among the first to organize a chapter of the Foreman's Association. The Packard chapter was chartered on October 18, 1942 (R. III, 1382, 1884). In a consent election conducted by the Board among the Company's foremen on February 23, 1943, prior to the Board's decision in *Matter of Maryland Drydock Co.*, 49 N. L.R. B. 733, decided May 11, 1943, 486 foremen voted for representation by the Association and only two against (R. II, 1308–1315).

The record shows that these foremen have persisted in their adherence to the Association throughout the intervening period despite the company's refusal to recognize or bargain with it. In support of its petition for certification in the instant case, the Association submitted evidence that 84 out of 125 general foremen, 444 out of 643 foremen, 184 out of 273 assistant foremen and 27 out of 65 special assignment men employed by the Company on December 2, 1944, were dues paying members of the Association (R. III, 1795; 1321–1322).

[8] As of the date of the hearing in the instant case the Association had been able to secure only two contracts, one with the Ford Motor Company and the other with the United Stove Company (R. III, 1803; 1323–1344, 1391–1395, 1883). Since that date the Association has succeeded in securing one additional contract, that with General Ceramics & Seatite Corp., reprinted in *Union-Shop Agreement Covering Supervisors*, 18 L. R. R. 103–108.

1315–1320, III, 1763, 1866, 2075). These strikes, which occurred between July 1, 1943 and November 1944, severely disrupted both war production and interstate commerce (R. III, 1803–1804).[6]

(e) *The Board's conclusions*

On the basis of the foregoing facts, the Board concluded that the classes of foremen on whose behalf the Association's petition was filed were "employees" within the meaning of Section 2 (3) of the National Labor Relations Act (R. III, 1795). The Board rejected (R. III, 1794–1795) the Company's argument that supervisory employees allegedly had not engaged in strikes to obtain collective bargaining rights prior to the passage of the Act and that Congress intended the Act to apply

[6] The Board found (R. III, 1803–1804), on the basis of statistics prepared by the Department of Labor and introduced in evidence at the hearing in the representation proceeding (Bd. Exh. 20, I, 55–58, II, 1315–1320), that "* * * after the decision in the *Maryland Drydock* case and from July 1, 1943, through November 1944, there were 20 strikes of supervisory employees; 131,000 employees were involved and 669,136 man-days of work were lost as a result. Over 96 percent of the man-days lost occurred in strikes for recognition. The basic industries of the nation were affected: shipbuilding, steel, aluminum, brass, automobile, coal mining, airplane products, railroad cars, and public utilities. The effect of these strikes for recognition on the production of vital war material has been serious." The Board also noted (R. III, 1804; 1449–1450) that "General Arnold, Commanding General of the Army Air Forces, testifying before the National War Labor Board in the case of the Foreman's Association of America on May 17, 1944, singled out the foremen's strikes as causing 'one of the most serious setbacks' that the Army Air Force program has had since its inception."

only to those classes of employees which had done so. The Board pointed out that organizations of supervisory employees formed for the purpose of engaging in collective bargaining antedate the Act by many years, and that at the time the Act was adopted collective bargaining on behalf of supervisory employees was a common practice in the printing, building, and metal trades, and in the maritime and railroad industries (R. III, 1794; III, 1763, 1916–1924).[10] The Board then found

[10] Documents introduced in evidence in the instant case reveal that in a number of trades and industries self organization and collective bargaining by supervisory employees had been well established long before the Act was passed. The organizational patterns included unions to which only supervisors were eligible as well as unions which represented both supervisory and rank and file employees in the same unit. Thus, the National Marine Engineers Beneficial Association now affiliated with the C. I. O., one of three maritime unions admitting only supervisory employees to membership, had been in operation since 1875; the International Typographical Union has required foremen to be members of the same locals as the rank-and-file employees under their supervision since 1889. Seven unions exclusively for supervisory employees were in existence before 1922. In addition, 29 national unions in the printing, building, and metal trades, and in the maritime and railroad industries either require or permit supervisory employees to be members of rank-and-file unions. Pet. Ex. 46, U. S. Bureau of Labor Statistics, Bull. No. 745, *Union Membership and Collective Bargaining by Foremen* (1942), pp. 1–5, 6–7; R. III, 1763, 1919–1924. See also *The Unionization of Foremen*, Research Report No. 6, American Management Association, New York, N. Y. (1945); Peterson, Florence, *American Labor Unions* (1945), pp. 90–97; Northrup, Herbert R., *The Foreman's Association of America*, Harvard Business Review, Vol. 23 (Winter, 1945), p. 187.

(R. III, 1794) that the Company's proffered "static touchstone" of jurisdiction, i. e., whether the employees' organizational activities antedated the Act, was unduly restrictive of the rights of "vast sections of employees in many vital industries," and was wholly incompatible with the broad purposes of Congress and with the guiding principles of construction of the statute approved by this Court. Applying those applicable principles, the Board found that the relation between the Company and its supervisory employees was that of employer and employee, and that the conditions of that relation required that the supervisory employees, under the premises of the Act, be accorded the benefit of its protection (R. III, 1795).

Apart from its contention that the supervisors here involved are not "employees" within the meaning of the Act, the Company contended further that no collective bargaining unit containing these supervisors could be found "appropriate" because, allegedly, collective bargaining by supervisors would not "effectuate the policies of this Act" (Section 9 (b)) (R. III, 1805–1806). The Company's primary argument, that the establishment of bargaining units for supervisory employees under the Act would divide the loyalty of supervisors between their employers and the Union, and would therefore react detrimentally upon established production techniques and upon the interests of management, was rejected by the Board (R. III, 1810–1812).

Such an assumption, the Board found (R. III, 1811), "is not only repugnant to the basic democratic philosophy upon which this Act is founded, but it has never proved valid in our experience under the Act." Drawing upon that experience, the Board noted that in the early days of administration of the Act similar fears had been expressed by employers concerning the fidelity of rank and file employees and that employers, including this very Company,[11] had objected for the very same reason to collective bargaining by plant guards (R. III, 1811; II, 1205–1206). In both instances, as the Board noted (R. III, 1811), these fears proved groundless.[12] The Board observed that the duty of loyalty owed by foremen to their employer extends only to the performance of duties by the foremen on behalf of their employer; that it does not restrict the foremen in bargaining on their own behalf with their employers for the best obtainable terms and conditions of employment for themselves (R. III, 1811–1812; I, 32–33, II, 753). The Board further took cognizance of the fact that many of the foremen here involved joined the Association more than two years before the hearing in the instant case and their loyalty to the Association arising from their membership therein has admittedly not detracted from their efficiency or loyalty to the Company in

[11] *Matter of Packard Motor Car Co.*, 47 N. L. R. B. 932, 933.

[12] The Company admitted at the hearing that its plant guards who have bargained collectively with it for several years have not grown any the less faithful or efficient in the performance of their duties (R. II, 1063–1065, 1205–1206).

the performance of their work (R. III, 1811; II, 1044, 1064–1066, 1081–1084, 1212–1213).

As the second ground for rejecting the "divided loyalty" argument, the Board noted that, in joining the Association for the purpose of engaging in collective bargaining, the foremen exercised a right which is theirs quite apart from the Act (R. III, 1816); that the Board is not empowered either to disband that organization or to prohibit the foremen from exercising their economic power to compel the Company to deal with them collectively rather than individually. Therefore the Board concluded that if it were to deny to the foremen access to the administrative machinery of the Act, it would invite the very causes of disruption of interstate commerce which the Act was designed to avoid.

Having thus decided to proceed with consideration of the Association's petition, the Board turned to the question of the type of unit which would be most appropriate to insure to the supervisory employees here involved the full benefit of their right to self organization and collective bargaining and best effectuate the policies of the Act. The Board concluded that for these purposes, a single unit comprising all four grades of foremen should be established (R. III, 1814–1820). In reaching this conclusion the Board considered the strong community of economic interest of all four classes of foremen, the similarity of their duties, functions and responsibilities, and the fact that in many re-

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spects their employer treats them as a single group; for example, all but a few are paid on a salary basis, all receive time and a half for overtime, all attend the same classes at the foremen's school, and all receive similar privileges and advantages which are not extended to rank and file employees (R. III, 1818–1819).

The Board considered the fact that some classes of foremen exercise a degree of supervision over other classes, a fact which the company urged should induce the Board to segregate each class of foremen into a separate unit, and found that this, of itself, was not sufficient to outweigh the factors which dictate grouping all four classes of foremen together for collective bargaining purposes (R. III, 1818).

(f) The Board's certification of the Association

Upon these findings the Board, one member dissenting, directed, pursuant to Section 9(c) of the Act, that an election be conducted among the foremen comprising the appropriate unit to determine whether or not they wished to be represented by the Association, the only labor organization claiming to represent them (R. III, 1820–1821, 1822–1834). In the election, held on April 17, 1945, the Association received 666 votes out of a total of 1,101 valid votes cast (R. III, 1758–1759, 1835–1836). Thereupon, on April 28, 1945, the Board certified the Association as the exclusive bargaining representative of the employees in the appropriate unit (R. III, 1758–1759, 1836–1837).

2. THE UNFAIR LABOR PRACTICE PROCEEDING

On May 18, 1945, the Company, refusing to recognize the certification, rejected the Association's request for a bargaining conference (R. I, 25; III, 1760–1761, 1841–1842, 1846–1850). The Association thereupon initiated proceedings under Section 10 of the Act, by filing charges that the Company had refused to bargain with it as the exclusive representative of the employees in the appropriate unit (R. I, 19; III, 1754, 1780–1781). In its answer to the Board's complaint and at the hearing in these proceedings, the Company admitted its refusal to bargain, but reiterated its contentions presented to the Board in the prior representation proceedings that the foremen involved are not "employees" within the meaning of the Act, and that they do not constitute a unit appropriate for the purposes of collecive bargaining (R. I, 20–21; III, 1754, 1756–1757, 1782–1785, 1787–1790, 2083–2085).

In its decision issued on December 6, 1945 (R. I, 31), the Board rejected these contentions,[12] affirmed its finding that the foremen constitute an appro-

[12] The Board adopted, without restatement, the findings and conclusions of the Trial Examiner who conducted the hearing (R. I, 30–31, 19–28). Board Chairman Herzog, however, who succeeded Chairman Millis shortly after the Board's decision in the representation case was issued, filed a special concurring opinion in which he voiced his agreement with the conclusions reached by the Board in that decision (R. I, 32–37). Board Member Reilly dissented because he inferred from the evidence as a whole that the Association was not a truly independent labor organization (R. I, 37–38).

priate unit for collective bargaining and found that the Company's admitted refusal to bargain with the Association as statutory representative constituted a violation of Section 8 (1) and (5) of the Act (R. I, 23–26). The Board ordered the Company to cease and desist from the unfair labor practices found, to bargain collectively with the Association upon request, and to post appropriate notices (R. I, 30–31).

3. THE ENFORCEMENT PROCEEDING

On December 18, 1945, the Board filed a petition in the court below to enforce the Board's order (R. I, 1–4). On August 12, 1946 the court entered its opinion enforcing the Board's order (R. III, 2096–2106, 2107–2108), one judge dissenting. The court rejected the Company's contention that because supervisors were "employers" within the meaning of Section 2 (2) of the Act, they could not be deemed "employees" within the meaning of Section 2 (3) (R. III, 2102–2105).[14] The court sustained the Board's conclusion that supervisors, in their relations with those who employ them, are "employees" within the meaning and purposes of Section 2 (3) of the Act (R. III, 2104–2105); that, as such, they possess the rights conferred upon employees in Section 7, including the right to bar-

[14] Judge Simons dissented on the ground that supervisors in their relations with their subordinates are "employers" within the broad definition contained in Section 2 (2) and that "the breadth of [that Section] necessarily limits the ambit" of the definition of "employee" contained in Section 2 (3) so as to exclude all who fall within the definition of

gain collectively in an appropriate unit (R. III, 2102); and that the unit established by the Board, comprising four grades of supervisors, is appropriate (R. III, 2105–2106). The court further sustained the Board's findings that the Association "is independent and neither a part of nor controlled by the union representing the production workers;" that representation of the supervisors by the Association "leaves the foremen uncontrolled agents in dealing with the rank and file;" and that "no reason appears to anticipate that the independence of the Foreman's Association of America will in the immediate future be destroyed" (III, R. 2106).

SUMMARY OF ARGUMENT

I

Foremen, who are employees in layman's parlance and at common law, are likewise employees under the broad definition of that term contained in the National Labor Relations Act. The Congressional purpose of equalizing bargaining power be-

"employer" from the category of "employee" (R. III, 2107–2108). In his dissent from the court's denial of the Company's petition for rehearing, Judge Simons drew further support for his conclusion from expressions by proponents of the bill which became the National Labor Relations Act indicating that their "dominant purpose" was to protect "laborers," "workers" and "production men"; and from the alleged fact that "supervisory employees were not identified with the labor movement" prior to enactment of the National Labor Relations Act and for a substantial period thereafter (R. III, 2127).

tween employees and employers applies equally to foremen in their relation with their employers as to rank and file employees. Recognition that foremen are "employees" within the meaning of Section 2 (3) of the Act is not precluded by the fact that they may also, under certain circumstances, be held to be "employers" or by the fact that employers are held responsible when foremen, who are vested with economic power over subordinates, use that power to thwart the organizational freedom of rank and file employees. Self-organization and collective bargaining by foremen are not *per se* destructive of the rights of rank and file employees; to the extent that there is no conflict between the exercise of rights by both groups the Board is duty bound to protect the rights of both. Where conflict arises between organizational activity by supervisors and rank and file freedom, the Board assesses the extent of the clash between them and applies such limitations upon supervisory activity as are necessary to preserve the paramount interests of the rank and file employees.

The Board and every court which has considered the question have held that foremen are employees under the Act and that, subject to the above limitation, they are entitled to the Act's protection in their efforts to organize and bargain collectively. That protection is as necessary for foremen as for rank and file employees, since, under individual bargaining, foremen have no greater bargaining power in dealing with their employers than do non-

supervisory employees. The evils which Congress sought to remedy in the Act are as much present in the foreman-employer relation as in the ordinary employee-employer relation.

Neither prior legislation nor contemporaneous comment by sponsors of the Act affords any indication that Congress intended to exclude foremen from the benefits of the Act, which, in terms, applies to them as to all other employees. Supervisory employees had engaged in collective bargaining long before the Act was passed and had been protected in their organizational rights by administrative agencies established by Congress in the days prior to enactment of the National Labor Relations Act. In view of these facts, the failure to exempt supervisors from the definition of "employee" is persuasive evidence that Congress intended to continue to grant them the same protection as other employees.

Neither self-organization for purposes of collective bargaining by foremen nor statutory protection of their right to do so tends to jeopardize legitimate employer interests in faithful performance of duty. The Board and the courts have recognized the fallacy in the argument that self-organization by employees for the purpose of advancing their own economic interests destroys the will or the power of employees to perform their duties properly on behalf of their employers. The argument is no more valid when applied to foremen than when applied to plant guards, editorial writers, confidential employees or ordinary rank and file employees upon

whose honesty and faithfulness employers must depend in the conduct of their business. In any event, denial of statutory protection would not obviate the dangers which the Company envisions, for it would still be lawful for foremen to organize. On the other hand, statutory protection of the self-organizational rights of foremen is not incompatible with protection of legitimate employer interests. Employers retain their power to punish by discipline or discharge for breach of duty arising from any cause. Labor organizations uniformly recognize the legitimacy of employer demands for faithful performance and provide safeguards in collective agreements against breaches stemming from improper union pressure. The history of supervisors in the trade union movement, and the available evidence concerning self-organization and collective bargaining by plant guards, establish that the Company's fears concerning the future faithlessness of its supervisors are without foundation. Finally, protection of the bargaining rights of foremen eliminates a potent source of interruption of commerce arising from strikes for recognition, the very type of strikes Congress sought to make unnecessary by the passage of the Act.

II

The Board had no power to hold that foremen, though employees, could not be included within some unit appropriate for purposes of collective bargaining. Such a holding would, in effect, read

Section 8 (5) out of the Act insofar as foremen are concerned. Section 9 (b), which authorizes the Board to classify employees into one of the stated types of bargaining units in a manner which will "insure to employees the full benefit of their right to self-organization and to collective bargaining and otherwise to effectuate the policies of this Act," does not empower the Board to exclude employees from all bargaining units. Nor is the Board empowered to "select bargaining agents" for employees. The statute expressly confers full freedom of choice of representatives upon the employees themselves. Unless the selection of a particular representative is violative of Section 8 (1) or (2) of the Act, or otherwise tends to infringe the statutory rights of other employees, the Board is therefore powerless to make extension of the benefits of the Act to supervisors turn upon the character or affiliation of the labor organization which supervisors select to represent them. Cf. *Hill* v. *Florida*, 325 U. S. 538.

III

The Board's finding that the four classes of foremen involved constitute a single appropriate bargaining unit follows well established principles and clearly comports with the standards provided by Congress for the Board's guidance. The similarity of duties of all grades of foremen which often results in interchange of positions and variations in obligation among particular classifications, the sim-

ilarity in privileges which distinguish them from both top management and rank and file employees, their common problems and status in bargaining with the Company, and the fact that they have organized as a single group, all lend overwhelming support to the Board's conclusion.

ARGUMENT

INTRODUCTION

Several issues left open by the Board in its decision in the instant case have been decided by the Board in subsequent cases. Since these decisions represent the Board's judgment on questions of importance in the construction of the statute and since they bear directly upon issues presented in this case, and referred to by the court below, it is necessary to summarize them briefly here. We shall point out below the respects in which they affect the issues in this Court.

In *Matter of L. A. Young Spring & Wire Corp.*, 65 N. L. R. B. 298, decided January 8, 1946, the Board held that it had no power to deprive supervisory employees of statutory bargaining rights by holding that they could not constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act. Section 9 (b), it concluded, conferred upon the Board power to classify employees and to segregate them into separate units for the purpose of effectuating the policies of the Act, but not to exclude employees from all units. The court below apparently adopted this view (R. III, 2102).

In *Matter of Jones & Laughlin Steel Corp.*, 66 N. L. R. B. 386, decided March 7, 1946, and 71 N. L. R. B., No. 203, decided December 30, 1946, the Board held that in view of the express policy of the Act to insure to employees "full freedom" in their choice of representatives it would be an abuse of the Board's administrative discretion to make the exercise of its powers under Section 9 of the Act depend on whether or not the representative selected by an appropriate unit of supervisory employees was affiliated with, or independent of, unions representing rank and file employees. The court below indicated disagreement with this construction of the Act (R. III, 2106). In its earlier opinion in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 146 F. 2d 718, judgment vacated and case remanded for further consideration, 325 U. S. 838, the court below held that the language of Section 9 (b), which provides that the Board shall decide in each case which of the specified types of bargaining unit is appropriate "to effectuate the policies of this Act" empowers the Board to "select bargaining agents" for employees (146 F. 2d at 720–721, 722). Pursuant to this theory of the Board's powers, the court there held that the Board erred in finding appropriate a unit of militarized plant guards which selected as their bargaining representative a labor organization which also represented the employer's production employees (146 F. 2d at 722–723). The court adhered to this view

in its opinion on remand (154 F. 2d 932, 934-935).[15] In its opinion in the instant case the court below reiterated this view of the Board's powers under the Act. It therefore felt constrained to pass upon "the propriety of the exclusive bargaining representative named by the Board" (R. III, 2106). It upheld the Board's certification only because "the union involved is independent and neither a part of nor controlled by the union representing the production workers" and therefore, "This is a situation diametrically opposite to that presented in *Jones and Laughlin Steel Corporation* v. *National Labor Relations Board, supra*, where the bargaining agent designated was the identical union which represented the production workers" (*ibid.*).

I

THE BOARD COULD PROPERLY DETERMINE THAT THE FOREMEN EMPLOYED BY THE COMPANY ARE "EMPLOYEES" WITHIN THE MEANING OF THE ACT

A. *The issue presented*

Section 2 (3) of the Act reads as follows:

> The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any

[15] This Court, on December 23, 1946, granted the Board's petition for a Writ of Certiorari in this case, No. 418, this Term.

> unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

It is the Company's position that, despite the sweeping inclusion in this definition of "any employee," with only specifically enumerated exceptions, an additional exception for supervisory employees should be read into the Act.

At the outset, it is necessary to point out an important limitation on the issue thus raised. This case does not present for determination by the Board or by the Court any issue concerning the legality of self-organization or concerted action by foremen for the purposes of collective bargaining. Here, unlike numerous other cases which have come before the Board and the courts,[16] the issue of cover-

[16] See e. g., *N. L. R. B.* v. *Hearst Publications*, 322 U. S. 111; *N. L. R. B.* v. *R. A. Blount*, 131 F. 2d 585 (C. C. A. 8), certiorari denied, 318 U. S. 791; *Matter of Park Floral Co.*, 19 N. L. R. B. 403; *Matter of Jalmar Berg*, 35 N. L. R. B. 357; *Matter of Federal Ice & Cold Storage Co.*, 18 N. L. R. B. 161, 164–165. And cf., the typical questions presented with respect to other Acts of Congress. *United States* v. *Silk*, No. 312, this Term. (Social Security Act); *Harrison* v. *Greyvan Lines, Inc.*, No. 673, this Term (Social Security Act); *Rutherford Food Corporation* v. *Walling*, No. 652, this Term (Fair Labor Standards Act); *United States* v. *Vogue, Inc.*, 145 F. 2d 609 (C. C. A. 4) (Social Security Act); *Grace* v. *Magruder*, 148 F. 2d 679 (App. D. C.) (Social Security Act); *Magruder* v. *Yellow Cab Co.*, 141 F. 2d 324 (C. C. A. 4) (Social Security Act); *Walling* v. *American Needlecraft*, 137 F. 2d 60 (C. C. A. 6) (Fair Labor Standards Act).

age does not turn on whether the persons involved are, on the one hand, "employees" who, ever since the demise of the "conspiracy doctrine", have enjoyed the "fundamental right" (*National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33) to organize and bargain collectively concerning the terms and conditions of their employment, or, on the other hand, independent enterprisers whose self-organizational activities are subjected by law to limitations on restraints of trade.[17] The Company does not challenge the fact that, apart from the National Labor Relations Act, foremen are "employees" both in layman's parlance and in law. Thus, both federal and state courts have recognized that foremen are "employees entitled to the protection of employer's liability[18] and workmen's compensation

[17] Compare, *Milk Wagon Drivers Union* v. *Lake Valley Co.*, 311 U. S. 91, *New Negro Alliance* v. *Grocery Co.*, 303 U. S. 552, and *Bakery & Pastry Drivers* v. *Wohl*, 315 U. S. 769, with *Columbia River Packers Ass'n* v. *Hinton*, 315 U. S. 143, and *American Medical Ass'n* v. *United States*, 317 U. S. 519.

[18] Prior to the abolition of common-law defenses in the Federal Employer's Liability Act, 53 Stat. 1404, 45 U. S. C. 51, and similar state statutes, it was the employers who contended that foremen were "employees," and hence "fellow servants" of the employees under them, so that the employers would be relieved from liability for the negligence of the foremen which resulted in injuries to members of their crews. In reply to this contention, it was never even argued that the foremen were not "employees" but only that, as respects the employees under them, the foremen were in the position of "vice principals" or representatives of their employers. The courts were not hospitable even to that contention. In *North-*

statutes,[19] despite the fact that foremen exercise authority over subordinate employees.

Nor does the Company assert that the activities of foremen in forming unions and in striking for the purpose of compelling employers to bargain col-

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ern Pacific R. Co. v. *Peterson*, 162 U. S. 346, 357, this Court said of a gang foreman who had complete authority to hire and fire, "He was in fact, as well as in law a fellow-workman * * *. The mere fact * * * that he did not actually handle a shovel or a pick, is an unimportant matter. Where more than one man is engaged in doing any particular work, it becomes almost a necessity that one should be boss and the other subordinate, but both are nevertheless fellow-workmen." And in *Alaska Mining Co.* v. *Whelan*, 168 U. S. 86, 89, the Court pointed out that whether the foreman "had or had not authority to engage or discharge the men under him is immaterial. Even if he had such authority, he was nonetheless a fellow-servant with them, employed in the same department of business, and under a common head."

The Federal Employer's Liability Act defines employees entitled to its benefits as "any employee of a carrier." This definition, identical in terms with the definition contained in Section 2 (3) of the National Labor Relations Act, has been applied without challenge to foremen. *Owens* v. *Union Pacific R. Co.*, 319 U. S. 715.

[19] State courts have uniformly held that the term "employee," used in Workmen's Compensation statutes, unless expressly restricted, applies to foremen and even to superintendents. See, e. g., *Bidwell Coal Co.* v. *Davidson*, 187 Iowa 809, 174 N. W. 592; *Harrelson* v. *State Ind. Comm.*, 92 Okla. 121, 218 Pac. 685; *Aken* v. *Barnet & Aufsesser Knitting Co.*, 118 App. Div. 463, 103 N. Y. S. 1078; *In re Rheinwald*, 168 App. Div. 425, 153 N. Y. Supp. 598; *Cashman's* case, 230 Mass. 600, 120 N. E. 78; *Dewey* v. *Dewey Fuel Co.*, 210 Mich. 370, 178 N. W. 36 (Mich.); *Adam Black & Sons* v. *Court of Common Pleas*, 8 N. J. Misc. 442, 150 Atl. 672; *Eagleson* v. *Preston Co.*, 265 Pa. 397, 109 Atl. 154; *Goldin* v. *Goldin Decorating Co.*, 247 N. Y. 603, 161 N. E. 99.

lectively with them are in any sense illegal.[20] The issue here presented is therefore a narrow one, i. e., whether the Board exceeded its authority in interpreting the statute, which is designed to minimize interruptions to commerce provoked by the refusal of employers to recognize and bargain collectively with representatives lawfully chosen by their employees, as not excepting from its scope such provocations to dispute as would inhere in an employer's refusal to recognize and bargain collectively with representatives lawfully selected by employees who are engaged as foremen. A contrary interpretation, as the Board pointed out (R. III, 1805, 1810, 1813–1814), would mean that foremen who have lawfully organized for purposes of collective bargaining, like non-supervisory employees who had organized for that purpose in the days prior to the National Labor Relations Act, would be compelled to resort to a trial of economic strength to compel recognition

[20] In the oral argument before the Board, the company's counsel in reply to a question by Board Member Houston, stated: "The foremen have a right to organize. We do not deny that." (R. II 1194). The proponents of the Case Bill (H. R. 4908, 79th Cong., 2d sess.), who deemed it inadvisable to afford statutory protection to organization and collective bargaining by foremen, did not seek to make such conduct illegal. Thus, although Section 9 (a) of the Bill as passed (Print of May 25, 1946) undertook to amend the definition of "employee" in Section 2 (3) of the National Labor Relations Act by excluding supervisors, Section 9 (c) of that Bill contained the explicit reservation that "nothing herein shall prohibit a supervisory employee from becoming or remaining a member of a labor organization."

from recalcitrant employers. The Board properly concluded, we submit, that nothing in the Act or in its legislative history requires that the large and growing body of industrial disputes which stem from employer refusals to bargain collectively with representatives freely chosen by foremen must continue to take their toll of interstate commerce rather than be resolved peacefully through the administrative machinery created by Congress for the purpose of dealing with questions concerning representation. The broad purposes of the statute, as well as its unambiguous language, militate against the imputation to Congress of any such intention.

B. *The scope of the term "employee" must be determined in the light of the purposes of the Act*

In its statement of "Findings and Policy" contained in Section I of the Act, Congress set forth, in explicit terms, the premises upon which the statute is predicated, and the objectives to be achieved through its enforcement. In the first paragraph of that Section, Congress found that "The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have * * * the necessary effect of burdening or obstructing commerce." In the second paragraph, it found that "The inequality of bargaining power between employers who do not possess full freedom of associa-

tion or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce." In the third paragraph, it found that "* * * protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions and by restoring equality of bargaining power between employers and employees." In the fourth paragraph, Congress therefore declared it to be the policy of the United States "to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions where they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection."

To implement this policy, Congress, in Section 7 of the Act, confirmed the existence of the right of "employees * * * to self-organization, to form,

join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." In Section 8 of the Act, Congress sought further to protect those rights by imposing upon employers the duty to refrain from interfering with their free exercise, and to bargain collectively with representatives selected by employees in the exercise of those rights.

Devising these guarantees as the expedient best calculated to attain the statutory objectives, Congress sought to extend them "so far as its power could reach." *National Labor Relations Board* v. *Hearst Publications,* 322 U. S. 111, 125. To assure that the statute would not be read "through the distorting lenses of inapplicable legal doctrine" (*Federal Communications Commission* v. *Pottsville Broadcasting Co.,* 309 U. S. 134, 144), Congress swept aside technical legal distinctions and in Section 2 (3) of the Act asserted, "The term 'employee' shall include *any employee,* and shall not be limited to the employees of a particular employer. * * *" [Italics added.] In so doing, it rejected common-law limitations on the concept of "employee" (*National Labor Relations Board* v. *Hearst Publications,* 322 U. S. 111, 120, 126–130), and *a fortiori,* could not have intended to exclude from the benefits of the Act persons who, like foremen, clearly meet "the tests of the more or less established concept of

'the legal relationship of employer and employee,' *Texas Co.* v. *Higgins*, 2 Cir., 1941, 118 F. 2d 636, 637" (*Deecy Products Co.* v. *Welch*, 124 F. 2d 592, 598 (C. C. A. 1)). Congress intended to expand, not contract, the "more or less established" category of "employee." In *National Labor Relations Board* v. *Hearst Publications, Inc.*, 322 U. S. 111, 129, this Court pointed out that the term "employee", "like other provisions, must be understood with reference to the purpose of the Act and the facts involved in the economic relationship. 'Where all the conditions of the relation require protection', protection ought to be given."

C. *The Board's conclusion that foremen are "employees" is supported by the terms of the Act and the facts of the economic relationship*

The purpose of the broad definition of "employee" was to insure that the benefits of the Act would be given the widest possible application. The only persons excluded are those employed as agricultural laborers, persons in domestic service, and those employed by their parent or spouse. These exceptions were not made because the theories of collective bargaining were inapplicable to such persons, but purely "for administrative reasons." S. Rep. No. 573, 74th Cong., 1st Sess., p. 7. "Nothing in the Act excepts foremen from its benefits nor from protection against discrimination nor unfair labor practices of the master." *National Labor*

Relations Board v. *Skinner & Kennedy*, 113 F. 2d 667, 671 (C. C. A. 8).

The Company's challenge to the Board's finding that the foremen are "employees" is not predicated upon any assertion that the finding is based upon an improper appraisal of "the facts involved in the economic relationship" between the foremen and the Company. Indeed, since it is undisputed that the Company hires the foremen and discharges them, fixes the rate and pays their compensation, and exercises complete control over the manner in which they perform their work, no such assertion could possibly be made. We know of no case in which persons whose working conditions are so completely controlled by another have not been held to be employees either at common law or within the meaning of the Act.[21] Indeed, in the *Hearst* case, this Court sustained the Board's finding that the district managers of the newspapers there involved were employees of the publishers, despite the fact that they were not compensated by the publishers on a formal salary basis; that they, rather than the publishers, fixed the price of the papers to the newsboys; and

[21] In *National Labor Relations Board* v. *E. C. Atkins & Co.*, 147 F. 2d 730 (C. C. A. 7), certiorari granted, judgment vacated, and cause remanded, 325 U. S. 838, decision on remand, May 31, 1946, certiorari granted, No. 419, this Term, the Circuit Court of Appeals for the Seventh Circuit held that militarized plant guards who "took [their] instructions *in toto* from the military authorities," and over whom the Company "exercised no control," were not employees of the Company. No such issue is presented here.

that they exercised complete supervisory powers over the newsboys, 322 U. S. 111, 118, note 15. Compare, *Matter of Star Publishing Co.*, 4 N. L. R. B. 498, 504–505, enforced, 97 F. 2d 465 (C. C. A. 9). The Company attacks, instead, by indirection. It argues that foremen are "employers" within the meaning of Section 2 (2) of the Act which defines "employer" to include "any person acting in the interest of an employer, directly or indirectly," that the same persons cannot, in logic, be "employees" within the meaning of the Act as well, and that therefore the statutory term "employee" must be given a special arbitrary meaning quite alien to the inescapable facts of the "economic relationship" between foremen and their employers. This position is neither logically sound nor consistent with economic facts or the purposes of Congress.

1. Foremen are employers for some purposes and employees for other purposes

Judicial authority long ago rejected the Company's basic premise that a man cannot be an "employer" for some purposes and an "employee" for others. "A foreman, in his relation to his employer is an employee, while in his relation to the laborers under him he is the representative of the employer and within the definition of Section 2 (2) of the Act." *National Labor Relations Board* v. *Skinner & Kennedy*, 113 F. 2d 667, at 671 (C. C. A. 8). Accord: *American Steel Foundries* v. *National*

Labor Relations Board, C. C. A. 7, decided December 28, 1946; *Jones & Laughlin Steel Corp.* v. *National Labor Relations Board*, 146 F. 2d 833 (C. C. A. 5), certiorari denied, 325 U. S. 886. Cf. The *Hearst* case, *supra*, 322 U. S. at p. 118, n. 15. As applied to foremen, the definitions of "employer" and "employee," therefore, "are not mutually exclusive." *National Labor Relations Board* v. *Armour & Co.*, 154 F. 2d 570 (C. C. A. 10), certiorari denied, October 14, 1946, No. 375, this Term. In accordance with the principle outlined above (pp. 39–40 see also pp. 56–60, *infra*), the applicability of the two concepts must be determined "in the light of the mischief to be corrected and the end to be attained." *Ibid.*

There is nothing novel about this analysis. The law recognizes many dual relationships. A man may be both a beneficiary and a trustee of the same trust at the same time (Restatement of the Law of Trusts, Secs. 99, 115; see also Sec. 183); a man may be both creditor and stockholder of the same corporation; and each member of a partnership is both agent and principal of each of the others. The courts long ago recognized that a supervisor occupies the dual role of employee in relation to the company which employs him and employer in relation to his subordinates (pp. 53–56, *infra*). The novelty is all on the Company's side, since its argument would logically exclude all employees from the scope of the Act. With respect to the public at large, rank and file employees, as much as super-

visory employees, act in the interest of their employers. To argue that they, therefore, cannot be treated as employees within the Act would be absurd. The answer to such an argument comes immediately to mind: rank and file employees do not act in the interest of their employer when they are bargaining with him about their working conditions. Neither do foremen.

The only distinction between rank and file employees and foremen which could possibly be relevant here is the fact that employers confer upon foremen power to direct and control the work performance and, to some extent, job security of rank and file employees. But this power does not aid the foremen in their own dealings with the employer. In those dealings they face the employer with no more and no less economic power than do the rank and file employees. The economic relationship between foremen and their employers, as we show below, pp. 56–60, is precisely that in which Congress found inequality of bargaining power to exist between, on the one hand, "employees who do not possess full freedom of association or actual liberty of contract" and, on the other hand, "employers who are organized in the corporate or other forms of ownership association." The vice in the Company's argument is that it misconstrues this Congressional concept of antithetical categories in the employment relation; a concept which views as the parties to the contract

of employment the employees who receive wages, on the one side, and the employers who pay them, on the other.[22] Obviously foremen are not employers in this, the only sense which would preclude them from being considered employees.

The Company's entire argument rests on the obviously fallacious premise that the interests of all persons within the purview of the Act are allied exclusively either with "management" or with "labor," and that when persons whose interests lie with "management" join a labor organization a conflict of interest is created which did not exist before. But conflict of interest between foremen and their employers is equally present whether foremen bargain individually or collectively; the employee's concern in advancing his own economic status does not vanish or even become subdued merely because upon promotion to supervisory work he represents management's interests in dealing with subordinates. As noted by Chairman Herzog in his concurring opinion (R. I, 32–33),

[22] That Congress considered the category of actual employers, as distinguished from those to whom employer status could for some purposes be imputed, to include only persons who owned a business enterprise in whole or in part appears clearly from Section 2 of the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. 101, *et seq.*, in which employees are contrasted with "owners of property [who] organize in the corporate or other forms of ownership association." In Section 1 of the National Labor Relations Act the term "employers" was substituted for the phrase "owners of property," and the balance of the clause was repeated verbatim.

whenever foremen and their employers "sit on the opposite sides of the bargaining table their interests are momentarily adverse. This is true whether they bargain individually or collectively." Union membership and collective bargaining, then, no more create a division of interest on the part of foremen than on the part of rank and file employees. Application of the provisions of the Act to this field, far from creating a conflict, extends to an existing conflict those "practices fundamental to the friendly adjustments of disputes" which Congress sought to encourage as a substitute for industrial strife (Act, Section 1). It is aimed precisely at "the mischief to be corrected." *Armour* case, 154 F. 2d at 574. And, as we shall demonstrate below, extension of the benefits of self-organization and collective bargaining to supervisors does not jeopardize legitimate employer interests in their faithful performance of duty (*infra*, pp. 66–86).

The inclusion of persons "acting in the interests of an employer" within the statutory definition of "employer" is explained by the purpose of the definition. Congress sought, by defining "employer" in the broadest possible terms, to reach infringements of the rights guaranteed employees which were accomplished by agents of employers as well as by employers themselves. By making such agents subject to the restraints which Section 8 of the Act lays upon "employer[s]", Congress

enabled the Board to guard against all infringements upon organizational freedom accomplished through the exercise of economic power over employees. The definition of "employer" therefore comes into play under the Act only for the purpose of determining whether the statute authorizes sanctions against particular persons who engage in conduct inimical to the statutory interests of employees.[23] The breadth of the definition permits the Board to restrain violations of the Act committed even by strangers to an enterprise, who, acting in the employer's interest or with his connivance or approval, infringe the rights of employees.[24] It would likewise sanction the issuance of orders against supervisory employees who utilize the power vested in them by the employer to coerce their subordinates, and against rank and file employees who, at the employer's instance, translate the employer's pro- or anti-unionism to their fel-

[23] *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 146 F. 2d 718, 720 (C. C. A. 6), certiorari granted on other points, judgment vacated, case remanded for further consideration, 325 U. S. 838, decision on remand, 154 F. 2d 932, certiorari granted, No. 418, this Term.

[24] See, *National Labor Relations Board* v. *Taylor-Colquitt Co.*, 140 F. 2d 92, 93 (C. C. A. 4); *National Labor Relations Board* v. *Northwestern Mutual Fire Association*, 142 F. 2d 866, 867–868 (C. C. A. 9), certiorari denied, 323 U. S. 726; *National Labor Relations Board* v. *Sun-Tent Luebbert Co.*, 151 F. 2d 483 (C. C. A. 9), certiorari denied, October 14, 1946, sub. nom. *Merchants & Mfgs. Assn. of Los Angeles* v. *National Labor Relations Board*, No. 109, this Term.

lows.[25] But the Board has not issued such orders against either supervisory or rank and file employees. It has not found it necessary to treat supervisory or rank and file employees as "employers" to remedy violations of the Act.

Where supervisors misuse the power vested in them by the employer to infringe the rights of subordinates the Board holds the employer responsible.[26] For the mere delegation of economic power over wages, hours, and working conditions to subordinates cannot serve to relieve the employer of his duty under the Act to prevent utilization of that economic power in a manner which tends to restrict the organizational freedom of employees. Neither, of course, can the employer escape responsibility for coercive conduct of rank and file

[25] Compare, *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 80–81; *Atlas Underwear Co.* v. *National Labor Relations Board*, 116 F. 2d 1010 (C. C. A. 6); *Triplex Screw Co.* v. *National Labor Relations Board*, 117 F. 2d 858, 860 (C. C. A. 6); *National Labor Relations Board* v. *New Era Die Co.*, 118 F. 2d 500, 504 (C. C. A. 3); *National Labor Relations Board* v. *Goodyear Tire & Rubber Co.*, 129 F. 2d 661, 664 (C. C. A. 5); *Clover Fork Coal Co.* v. *National Labor Relations Board*, 97 F. 2d 331, 335 (C. C. A. 6); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. 2d 780, 792 (C. C. A. 9), certiorari denied, 312 U. S. 678.

[26] *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 520; *National Labor Relations Board* v. *Moench Tanning Co.*, 121 F. 2d 951, 953 (C. C. A. 2); *Birmingham Post Co.* v. *National Labor Relations Board*, 140 F. 2d 638, 639–640 (C. C. A. 5).

employees which he has authorized or ratified or is under a duty to prevent.[27]

These principles, which have been well established since the earliest days in the administration of the Act, have never been affected by the Board's recognition, for an equally long period, as we shall show (*infra*, pp. 52–56), that supervisors, as well as rank and file employees are protected by the self-organizational guarantees of Section 7 of the Act. Supervisory employees may fully exercise their rights of self organization so long as they do not interfere with the organizational rights of subordinate employees. That the exercise by supervisory employees of organizational rights need not interfere with the rights guaranteed subordinate employees under the Act is apparent from the facts of the instant case. The organization of the Company's foremen into the Association, an unaffiliated labor organization, the membership of which is confined to supervisory employees, does not *per se* constitute any threat of interference with the affairs of the rank and file employees. Nor would the fullest activity of the foremen on behalf of the Association in securing collective bargaining with the

[27] *Reliance Mfg. Co.* v. *National Labor Relations Board*, 125 F. 2d 311, 317–318 (C. C. A. 7); *National Labor Relations Board* v. *General Motors Corp.*, 116 F. 2d 306, 311 (C. C. A. 7); *National Labor Relations Board* v. *Hudson Motor Car Co.*, 128 F. 2d 528, 533 (C. C. A. 6). See also cases cited, note 25 *supra*.

Company give rise to any such threat. As the Board noted (R. III, 1809), it is nowhere contended that by joining the Association and authorizing it to represent them for purposes of collective bargaining, the foremen have infringed the statutory rights of other employees.

Although the question of organizational activity by supervisors which affects the freedom of rank and file employees is therefore not present in this case, we think it desirable to point out the limitations which the Board has placed upon the conduct of supervisors in the interests of preserving to the rank and file the fullest measure of organizational freedom. The factual patterns which come before the Board present the problem of assessing the impact upon rank and file freedom of particular kinds of organizational activity by supervisory employees. In the instant case, and in cases like *Matter of Jones & Laughlin Steel Corp.*, 66 N. L. R. B. 386, 71 N. L. R. B., No. 203, where supervisors in the coal mining industry chose to be represented by the powerful labor organization which represented the rank and file, the Board found no threat to rank and file freedom in the conduct of the supervisors. Since in the circumstances presented in the *Jones & Laughlin* case, affiliation of the supervisors with the rank and file union, realistically viewed, could not threaten the independence of the rank and file, the Board announced that it was without power to deprive the supervisors of the right

to select that union as their bargaining representative.

However, particularly in fields where rank and file organization is relatively new, the Board is alert to detect and prevent infringements of rank and file freedom which may inhere in organizational activity by supervisors which goes beyond mere selection by them of the same bargaining representative which represents the rank and file employees. Thus, in *Matter of Climax Engineering Co.*, decided July 30, 1946, 66 N. L. R. B. 1359, the Board found that the mere wearing of union buttons by supervisors identical with those worn by rank and file employees, might "form a barrier, though no doubt a slight one, to the full exercise by subordinates of their freedom of choice." The Board concluded that this activity by supervisors, under the circumstances of that case, was therefore not permissible and that an employer might be justified in taking appropriate action to prevent it. Cf. *Matter of Brown Co.*, 65 N. L. R. B. 208; *Matter of E. Anthony & Sons, Inc.*, 70 N. L. R. B. 717.

In balancing the rights of supervisors against those of rank and file employees, the Board, as its decision in the *Climax Engineering* case, *supra*, shows, properly considers the rights of the rank and file paramount. It has so considered them from the very first. Its conclusion in the instant case and in the *Jones & Laughlin* case, that accom-

modation of the statutory rights of supervisors to bargain collectively through representatives of their own choosing with the statutory right of rank and file employees to be free from interference rendered potent by economic power flowing from the employer, is satisfactorily achieved by precluding supervisors from participating in the organizational affairs of subordinates without at the same time denying supervisors the right to select a bargaining agent to bargain for them, comports exactly with the Board's historical position that supervisors are employees under the Act and are to be protected insofar as such protection is compatible with preservation of the freedom of the rank and file.

Cases involving the rights of foremen and supervisory employees under the Act have arisen since the inception of the Board's administrative history. Uniformly and without a single exception, the Board and every member of the Board who has considered the question, as well as every reviewing court, has held that foremen are employees and entitled to protection against discriminatory or coercive conduct designed to prevent self-organization.[28]

In the first volume of the Board's decisions, in *Matter of Fruehauf Trailer Co.*, 1 N. L. R. B. 68,

[28] Compare the law review comment: Rosenfarb, Joseph. *Foremen on the March*, 7 Fed. Bar. Journal, 168–182; and notes, 59 Harv. L. Rev. 606–611; 55 Yale L. J. 754–777; 13 Univ. Chi. L. Rev. 332–346; 5 Lawyers Guild Rev. 44–48.

76, the Board ordered the reinstatement of a foreman who had been discriminatorily discharged because of his union activity. The order was upheld by this Court in *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49, which was one of the five cases in which the constitutionality of the Act was initially sustained. In *National Labor Relations Board* v. *Skinner & Kennedy Stationery Co.*, 113 F. 2d 667, 671 (C. C. A. 8), enforcing 13 N. L. R. B. 1186, 1192–1193, also involving the discriminatory discharge of a foreman, the employer specifically contended that foremen are not employees under the Act. The court sustained the Board's order of reinstatement and stated that "A foreman, in his relation to his employer, is an employee, while in his relation to the laborers under him he is the representative of the employer and within the definition of Section 2 (2) of the Act." The court concluded "That nothing in the Act excepts foremen from its benefits nor from protection against discrimination nor unfair labor practices of the master." Subsequently, in *Eagle-Picher Mining and Smelting Co.* v. *National Labor Relations Board*, 119 F. 2d 903, 911 (C. C. A. 8), enforcing as modified in respects not here material, 16 N. L. R. B. 727, 822–829, a chemist who was head of the employer's research department, earning in that position from $450 to $591.66 per month and who hired the research chemists working under him, was held to be an employee and

his reinstatement ordered by the same circuit court of appeals. In *Jones & Laughlin Steel Corp.* v. *National Labor Relations Board*, 146 F. 2d 833 (C. C. A. 5), certiorari denied, 325 U. S. 886, enforcing 54 N. L. R. B. 679, there was involved the employer's refusal to bargain collectively with the duly elected representatives of a unit composed of ship captains or masters as well as mates and pilots. The court rejected the contention that masters, since they specifically represented the owner and were charged with maintaining discipline on board ship, should be excluded from a bargaining unit of masters, mates, and pilots, and it enforced the Board's order requiring the employer to bargain collectively with the National Organization of Masters, Mates, and Pilots for all classes of employees included in the unit sought by the union. The court below followed this uniform line of authority (R. III, 2104–2105). The most recent case involving the status of supervisory employees under the Act is the decision of the Circuit Court of Appeals for the Seventh Circuit in *American Steel Foundries* v. *National Labor Relations Board*, decided December 28, 1946 in which that court held, as it had earlier held in *R. R. Donnelley Co.* v. *National Labor Relations Board*, 156 F. 2d 416, petition for a writ of certiorari filed No. 790, this Term, that foremen are employees, and in which it sustained a Board order requiring the employer to reinstate with back pay

two supervisory employees who had been discharged because of their activities in and on behalf of the Foreman's Association of America. In a number of other cases, the courts and the Board have held that supervisory employees of varying degrees of managerial authority are employees and entitled to protection under the Act against discriminatory or coercive conduct designed to prevent self-organization.[29]

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[29] *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333, enforcing 1 N. L. R. B. 201, 222–225; *National Labor Relations Board* v. *American Potash & Chemical Corp.*, 98 F. 2d 488, 493 (C. C. A. 9), certiorari denied, 306 U. S. 643, enforcing 3 N. L. R. B. 140, 158–159; *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. 2d 862, 870–871 (C. C. A. 2), certiorari denied, 304 U. S. 576, enforcing as modified 2 N. L. R. B. 626, 678; *National Labor Relations Board* v. *Star Publishing Co.*, 97 F. 2d 465 (C. C. A. 9), enforcing 4 N. L. R. B. 498, 504–505; *National Labor Relations Board* v. *Luzuray, Inc.*, 123 F. 2d 106, 108–109 (C. C. A. 2), enforcing 16 N. L. R. B. 37, 42–45; *National Labor Relations Board* v. *Richter's Bakery*, 140 F. 2d 870 (C. C. A. 5), certiorari denied, 322 U. S. 754, enforcing 46 N. L. R. B. 447, 450, 474–479; *National Labor Relations Board* v. *Whiting-Mead Co.*, 148 F. 2d 817 (C. C. A. 9), enforcing 45 N. L. R. B. 987, 1015–1018; *Matter of Warfield Co.*, 6 N. L. R. B. 58, 61–64; *Matter of Atlantic Greyhound Corp.*, 7 N. L. R. B. 1189, 1196; *Matter of Horace Prettyman*, 12 N. L. R. B. 640, 655–656, order set aside on other grounds, 117 F. 2d 786 (C. C. A. 6); *Matter of Chambers Corporation*, 21 N. L. R. B. 808, 829–830; *Matter of Condenser Corp.*, 22 N. L. R. B. 347, 386–389, enforced, 128 F. 2d 67, 74–75 (C. C. A. 3); *Matter of Golden Turkey Mining Co.*, 34 N. L. R. B. 760, 776–779; *Matter of Soss Mfg. Co.*, 56 N. L. R. B. 348; cf. *Hazel Atlas Glass Co.* v. *National Labor Relations Board*, 127 F. 2d 109, 117–118 (C. C. A. 4).

In each of the foregoing cases, moreover, with the exceptions of the *Richter* and *Eagle-Picher* cases, the supervisory employee, whose discharge was remedied by the Board order being enforced, was a member of a labor organization and, in each case, the union membership and activity of the supervisory employee in question impelled his discharge. In each of those cases, moreover, except the *Hazel Atlas* and *American Steel Foundries* cases, the labor organization of which the foremen were members was composed of rank and file employees.

The Board's accommodation of the rights of supervisors to the rights of rank and file employees as we have shown, (*supra*, pp. 50–52) preserves to rank and file employees freedom from abuses stemming from the economic power with which supervisors are vested by employers. The Board's recognition of the rights of supervisors to bargain collectively with employers in their own interests is likewise firmly grounded, as we shall show, in the facts of the economic relation between supervisors and their employers and in the premises of the Act as applied to that relation.

2. The economic relation between foremen and their employers requires treatment of foremen as "employees" within the meaning of the Act

In the absence of self-organization and collective action by foremen, their wages, hours, and other working conditions are fixed, theoretically,

by individual bargaining with their employer. In practice, however, the bargaining power of individual foremen *vis-a-vis* the employer, like the bargaining power of individual non-supervisory employees, is so small that the system is tantamount to unilateral employer determination of their terms and conditions of employment. The foreman-employer relationship, like the "typical employer-employee relationship [does] not have even the appearance of trading or bargaining. The employer simply notif[ies] the worker what wages he [is] to get and the hours he [is] to work."[30] The employees, in turn, "are practically constrained to obey * * *." *Holden* v. *Hardy*, 169 U. S. 366, 397. The record here demonstrates the truth of this observation as applied to the relations between the company and its foremen. See *supra*, note 6, pp. 14–15.

To such a situation the announced statutory objective of "restoring equality of bargaining power between employers and employees" obviously applies. "The very purpose of providing by statute for the collective agreement is to supersede the terms of separate agreements of employees with

[30] Testimony of Bishop Francis Haas, Member of the National Labor Board established under Section 7 of the N. R. A. before a Senate Committee considering the Wagner Bill. *Hearings*, Senate Committee on Education and Labor, on S. 2926, 73rd Cong., 2nd Sess., Pt. 1, p. 116. The economic material in this brief was prepared with the assistance of Louis Schwartz, Associate Industrial Analyst on the staff of the Board.

terms which reflect the strength and bargaining power and serve the welfare of the group." *J. I. Case Co.* v. *National Labor Relations Board*, 321 U. S. 332, 338. It is, of course, no answer to say that the particular terms unilaterally offered by any employer to individual employees are favorable to the employees' interests. It is impossible to show that, however favorable the terms unilaterally conferred upon employees by the employer may be, terms arrived at through collective bargaining might not be more favorable.[31] Even if such a showing could be made, however, it would not dispose of the issue,[32] for, as the Board here pointed out, the basic grievance of foremen, like the basic grievance of all employees, is "the denial by their employer of their right to participate in the decisions which affect their welfare as employees" (R. III, 1812).[33] Since effective partici-

[31] *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 319 U. S. 533, 542-544.

[32] Cf. *Corning Glass Works* v. *National Labor Relations Board*, 118 F. 2d 625, 629 (C. C. A. 2); *Western Union Telegraph Co.* v. *National Labor Relations Board*, 113 F. 2d 992, 997 (C. C. A. 2).

[33] The Committee appointed by the National War Labor Board to study foremen's grievances commented as follows on this point (R. III, 1763, 1913-1914):

"Foremen have observed the increasing definiteness with which the terms of employment and working conditions are specified by contract for the rank and file workers. Many foremen have been promoted during the war from the rank and file where such conditions existed. As foremen they found uncertainties concerning their rights and prerogatives. The rules or policies governing sick leave, vacations, promotion, transfer and demotions were often not in writing and

pation by employees in making such decisions is possible only if they act together by bargaining collectively with their employer, the desire of foremen "to have a voice in making the decisions that vitally affect their everyday lives," like the same desire of non-supervisory workers, is "one of the primary motives for union membership."[34]

The existence of this grievance and its potency to engender industrial strife were recognized by Congress in the statute. In the absence of any

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were inadequately understood. They were sometimes not explained. Grievances typically had to be presented personally and without the assistance of a steward or the support of an organized group. This situation could be compared with the effective grievance procedures for the organized rank and file. The fact that all foremen were not treated alike aroused suspicions of discrimination and a feeling of insecurity. The lack of assurance that there were uniform rules uniformly applied was a source of dissatisfaction.

"The foreman had little or no participation in determining the terms of his employment, nor did he have any representative speaking up for him in the councils of management to press his case. If such occurred, it was more likely a considerate superior than an interest (sic) representative. The whole relationship of the foreman to higher management was too remote to inspire a sense of participation either in determining his own terms of employment or in formulating policies which he was obligated to execute.

"This combination of conditions did not inspire self-respect nor lend dignity to the position of foremen."

[34] Golden, Clinton S. and Ruttenberg, Harold, Jr., *The Dynamics of Industrial Democracy* (New York, 1942), p. 82. "The real importance of collective bargaining consists in the fact that it offers wage-earners the opportunity to participate effectively in determining the conditions under which they work." Twentieth Century Fund, *Labor and the Government* (New York, 1935), pp. 5–6.

clear indication that Congress did not intend to give statutory redress to this grievance when held by foremen, the Board is duty bound to follow the policy enjoined upon it by Congress of "encouraging the practice and procedure of collective bargaining," the practice declared by Congress to be "fundamental to the friendly adjustment of industrial disputes," to the end that the "refusal by employers to accept the practice and procedure of collective bargaining" need not provoke strikes with their attendant disruption of commerce.

D. *The legislative history of the Act*

The Board found no indication in the Act, its legislative history, or in any extrinsic materials, that Congress intended to exclude foremen from the benefits of the Act.

1. The preceding railway labor legislation

As the Board early noted,[35] the inclusion of "subordinate officials" of carriers as defined by the Interstate Commerce Commission within the definition of "employees" contained in the Railway Labor Act (44 Stat. 577, 45 U. S. C. 151) is a a clear indication of Congressional policy to extend the protection of collective bargaining rights to this

[35] *Matter of Union Collieries Coal Company*, 41 N. L. R. B. 961, 44 N. L. R. B. 165; *Matter of Godchaux Sugars, Inc.*, 44 N. L. R. B. 874.

class of employees.[36] It affords conclusive proof that Congress did not consider such an extension subversive of management prerogatives or American business. Neither did the railroads who, together with the railroad unions, drafted and wholly approved of the 1926 Railway Labor Act in which the same language appears.[37]

Congress, in drafting the National Labor Relations Act, used not narrower, but broader language, including "any employee," with stated exceptions. Since the National Labor Relations Act was avowedly "an amplification and further clarification of the principles" of the Railway

[36] Section 1 (5) of that Act provides:
"The term 'employee' as used herein includes every person in the service of a carrier * * * who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission * * *."
The Congressional policy of extending the benefits of recent social legislation to supervisory employees has not been confined to the Railway Labor Act. Compare the Merchant Marine Act of 1936, 52 Stat. 966, 46 U. S. C. 1253 (c), and the Social Security Act, 49 Stat. 647, 26 U. S. C. 1426 (d). Indeed, where Congress has desired to exclude certain persons who would normally be considered "employees" from the benefits of a particular statute it has acknowledged their status as "employees" and explicitly provided for their exemption. See, for example, the Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U. S. C. 203 (e) and 213 (a) (1).

[37] 44 Stat. 577, Sec. 1, Fifth; Report of the House Committee on Interstate and Foreign Commerce on H. R. 9463, H. Rep. No. 328, 69th Cong., 1st Sess., p. 1; Report of the Senate Committee on Interstate Commerce, on S. 2306, S. Rep. No. 222, 69th Cong., 1st Sess., p. 2.

Labor Act,[38] the use of this more general language can hardly be given a restrictive significance. Rather it must be concluded, as the Board did conclude,[39] that

> * * * the wide and changing variety of collective bargaining forms and practices in the large industrial area subject to the jurisdiction of the Labor Relations Act impels the view that Congress, rather than attempting an exact definition, left to the administrative determination of the Board in each case the duty of deciding whether a particular type of worker, not specifically excluded, is within the ambit of the unfair labor practice Sections of the Act.

This reading of the legislative history comports with the conclusion reached by this Court in the *Hearst* case that, in defining the term "employee" in general rather than in specific terms, Congress left it to the Board to decide particular questions of coverage in the light of the purposes of the Act.

2. Congressional references to "workers" and "laborers"

Nor do the Company's references to terms such as "workers" and "laborers" in the Act, the legislative history, and certain court decisions,

[38] H. Rep. No. 1147, 74th Cong., 1st Sess., p. 3.

[39] *Matter of Soss Manufacturing Company*, 56 N. L. R. B. 348, 350.

throw any light on this problem. Undoubtedly these words were viewed by their users as synonymous with "employee" and their use was merely a convenient device to avoid repetition. There is no reason to assume that they were intended as implied limitations on the natural meaning of "employee". Indeed, in view of the explicit sweeping definition of that term in Section 2 (3) of the Act, there is no need or justification for a search for hidden implications elsewhere. Like the word "employee", the words "worker" and "laborer" are certainly broad enough to apply to foremen whose work is closely connected with the production lines.[40] The identical argument which the Company here urges as a bar to the recognition of supervisors as employees within the meaning of the Act, has been urged as a bar to the recognition of clerical and other non-manual workers as employees.[41] The argument, found lacking in merit as applied to those employees,[42] is equally lacking in merit here.

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[40] Note 18, 19, pp. 34–35, *supra*.

[41] *National Labor Relations Board* v. *Armour & Co.*, 154 F. 2d 570 (C. C. A. 10), certiorari denied, October 14, 1946, No. 375, this Term.

[42] Clerical and other nonmanual workers have uniformly been held to be entitled to the benefits of the Act. *National Labor Relations Board* v. *Armour & Co.*, 154 F. 2d 570 (C. C. A. 10), certiorari denied, October 14, 1946, No. 375, this Term; *Associated Press* v. *National Labor Relations Board*, 301 U. S. 103, 129; *National Labor Relations Board* v. *Bank of American Nat. Trust & Savings Assn.*, 130 F. 2d 624 (C. C. A. 9); *National Labor Relations Board* v. *Clarks-*

3. The extent of foremen's organization at the time of passage of the Act

Unsound also, as the Board found, is the Company's contention that the Act is to be construed as applicable only to those classes of employees which had attempted to organize and bargain collectively, or had engaged in strikes, prior to the passage of the Act. Even if it were true that supervisory employees had not attempted to engage in collective bargaining prior to the passage of the Act, this fact would in no way limit the Board's jurisdiction. The Act is not emergency legislation designed as an *ad hoc* remedy for a preexisting condition. Rather it is permanent, broad legislation, designed to achieve the purposes stated in its first Section: to encourage self-organization and collective bargaining, to equalize the bargaining power of employees with their employers so that employees might achieve an effective voice in the determination of their terms and conditions of employment. Manifestly, such a purpose contemplated self-organization among employees then unorganized and extension of the practice of collective bargaining into areas in which it did not then exist.

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burg Publishing Co., 120 F. 2d 976 (C. C. A. 4); *Eagle Picher Mining & Smelting Co.*, 119 F. 2d 903, 911 (C. C. A. 8); *Aluminum Ore Co.* v. *National Labor Relations Board*, 131 F. 2d 485, 486 (C. C. A. 7); See, McIver, Wagner and McGirr, *Technologists' Stake in the Wagner Act* (American Association of Engineers, 1944).

In fact, however, as we have shown (*supra*, p. 18), self-organization among supervisors was common when the Act was passed. Moreover, prior to that date, administrative agencies established to administer Section 7 (a) of the National Industrial Recovery Act, 48 Stat. 195, issued decisions which applied the self-organization guarantees of that Section to supervisory employees.[43] "Congress, in enacting the National Labor Relations Act, had before it the record of this experience." *H. J. Heinz Co.* v. *N. L. R. B.*, 311 U. S. 514, 524. In view of these facts, the failure expressly to exempt supervisors from the definition of "employee" is persuasive of an intention to continue to afford them protection.

4. Congressional acquiescence in the Board's interpretation

Finally it should be noted that although the Board, in its earliest days, adopted and thereafter consistently maintained the view that supervisors are employees within the meaning of the Act and has uniformly protected all supervisors against interference and discrimination in the exercise of those rights, Congress has never declared the Board's interpretation of the Act erroneous. Indeed, Congressman Smith of Vir-

[43] *Matter of Available Truck Co.*, 2 N. L. R. B. (old) 68; *Matter of Geudel, Paeschke & Frey Co.*, 2 N. L. R. B. (old) 393; *Matter of Pennsylvania-Dixie Cement Corp.*, 2 N. L. R. B. (old) 417.

ginia, on February 25, 1943, introduced a bill to amend the National Labor Relations Act by excluding from the definition of "employee" in Section 2 (3) "any individual employed in a bona fide administrative, professional, or supervisory capacity", H. R. 1996, 78th Cong., 1st Sess. The bill was referred to the Committee on Labor (89 Cong. Rec. 1353) and was never reported to the House. Among amendments to the Wagner Act recently proposed in the Case Bill, H. R. 4908, 79th Cong., 2nd Sess., was one excluding supervisory employees from the definition of "employee" contained in Section 2 (3). The President's veto of this amendatory legislation was sustained (92 Cong. Rec. 6798, 6801). This history affords some evidence that Congress assumed that the National Labor Relations Act as originally enacted applied to supervisors.

E. *Statutory protection of foremen's right to organize and bargain collectively does not jeopardize employer interests in the faithful performance of supervisory duties*

The Company argues that the plain language of the Act should be distorted in the manner it suggests because, if it were required to bargain collectively with a union of foremen, the foremen would no longer have single-minded devotion to

the interests of management; their allegiance would be divided between management and the union. This division of allegiance, the Company contends, would preclude management from relying on the judgment and discretion of foremen, since, allegedly, management could not be certain whether the foreman's judgment in any instance was influenced solely by consideration of the welfare of the Company, or, in part at least, by a desire to promote the interests of his union. Those interests, it is further contended, are intimately bound up with the interests of the union to which rank and file employees belong and may well, therefore, influence the foreman in his dealings with his subordinates. This, according to the Company, would result in disruption of established managerial techniques and would give "alarming impetus to the collectivization of industry now [according to the Company] going on" (Brief before the Board in the representation case, pp. 98, 99).

This argument is simply a broadside attack on the honesty of foremen. The Company assumes that the foreman's interest in his union will lead him to betray the interests of his employer. The assumption is entirely unjustified. Neither the argument nor the assumption has any greater

weight when applied to foremen than when applied to plant guards, to newspaper editorial writers, to confidential employees, or indeed, to all employees upon whose judgment, discretion, and faithfulness employers must rely in the conduct of their business. In meeting this argument, which has been rejected by Congress,[45] the Board and the Courts have refused to assume, as the Board here refused to assume, "that self-organization for collective bargaining would prove incompatible with * * * faithful performance of duties" (R. III, 1811).

1. Faithful performance of supervisory duties may be adequately insured by punishing breaches when they occur

At the very outset it is important to recognize that the conflict of interests which the company fears will unduly influence its foremen does not come into being when foremen organize; it exists as soon as foremen are employed. The interests of foremen, like other employees, undoubtedly coincide in large part with those of the employer, because of mutual interest in the welfare and progress of the enterprise (*infra*, p. 70). They also inevitably conflict in the area of determining the foreman's compensation and other working conditions. If we adopt the company's specula-

[45] See, e. g., Hearings on S. 1958 before the Senate Committee on Education and Labor, 74th Cong., 1st Sess., Pt. 3, p. 479; Hearings on H. R. 2239 before the House Committee on Military Affairs, 78th Cong., 1st Sess., p. 758.

tive approach, we must anticipate that the unorganized foreman will allow his personal interests to interfere with his work as much as the organized foreman. A foreman whose request for a raise has been denied may vent his spleen against the employer in any number of ways which may involve breach of duty; another may attempt to stay in the good graces of his employer by improperly concealing his own errors. The threat of this kind of misstep stems from the employer-employee relationship. It is not created by the foremen's decision to act either individually or collectively to advance their own interests in relation to the employer.

An employee's interest in furthering his own cause, individually or by advancing the cause of his union, does not differ even in degree, and certainly not in kind, from many influences to which foremen as well as other employees are subject as human beings. Desires to maintain personal friendships, to favor coreligionists, fellow club members, or adherents of similar political views; these impulses and many more are constantly at work. But these allegiances have never been regarded as necessarily incompatible with the faithful performance of duty, and the company does not complain that because they exist, it is unable to place trust and confidence in the judgment of its foremen. Any foreman may, and most probably does, occasionally

arrive at a faulty decision as a result of one or more of these factors, but allegiance to a union is no more likely thus to rob a foreman of his sense of responsibility to his employer than are these other allegiances. As the Board pointed out in *Matter of L. A. Young Spring & Wire Corp.*, 65 N. L. R. B. 298, 304, n. 17, "Manifestly, the unionized, as well as the non-unionized foreman has at least a selfish interest in the success of the business from which he draws his livelihood, and this interest is likely to have a powerful restraining influence upon any displays of union loyalty which might adversely affect his employer." (Cf. R. II, 1067). Also, the foreman's "instinct of workmanship,"[46] his pride in doing a good job, as well as his native honesty, are not so easily overcome.

In view of these facts, the fiduciary principles of the common law which the Company would here apply are entirely inapposite. Those principles, familiarly applied to property transactions, operate only to prohibit a fiduciary from utilizing his fiduciary position[47] in such a manner as to further conflicting financial interests. They do not bar from fiduciary position persons who may find any of their own interests in opposition to

[46] Veblen, Thorstein, *The Instinct of Workmanship* (New York, 1922), pp. 25, 33.

[47] Even a trustee may, of course, act contrary to the interest of beneficiaries with respect to matters outside the trust. *Restatement of the Law of Trusts*, Sec. 2, Comment (b).

the interests of those whom, as fiduciaries, they are bound to serve.[48] Such a situation is presented with respect to corporate managers and directors whose personal interests are "often radically opposed" to those of the stockholders.[49] Yet the law does not prohibit such managers or directors from continuing to act in a fiduciary capacity; it seeks to prevent and remedy breaches of trust, but does not require divestiture of one interest or the other.[50]

Assuming that a foreman does have a fiduciary relationship with his employer with respect to the performance of his supervisory duties, that relationship is most closely analagous to that of an agent to his principal in, for example, an agency for the sale of property.[51] Yet it has never been held that such agents may not bargain with their

[48] *Bullivant* v. *First National Bank et al.*, 246 Mass. 324, 141 N. E. 41; *Anderson* v. *Bean*, 272 Mass. 432, 172 N. E. 647, 72 A. L. R. 959; *Dumaine* v. *Dumaine*, 301 Mass. 214, 16 N. E. 2d 623, 118 A. L. R. 834; *In re Johnson's Estate*, 187 Wash. 552, 60 P. 2d 271, 160 A. L. R. 217; *Houghteling* v. *Stockbridge*, 136 Mich. 544, 99 N. W. 759; *O'Neile* v. *Ternes*, 32 Wash. 528, 73 Pac. 692.

[49] Berle & Means, *The Modern Corporation and Private Property* (New York, 1934), p. 122.

[50] *Id.* at Chapter VI, "*The Divergence of Interest Between Ownership and Control*," pp. 119–125; see also Chapter V, "*The Legal Position of Management*," pp. 220–232.

[51] See *Restatement of the Law of Trusts*, Section 2, Comment (b): "The scope of the transactions affected by the relation and the extent of the duties imposed are not identical in all fiduciary relations. The duties of a trustee are more extensive than the duties of some other fiduciaries."

principals about their commission. It could not even be suggested that such an agent should not join an association of similarly occupied agents because he might be tempted to favor fellow members, in violation of his duty to obtain the highest possible price for his principal.

The solution for such problems in the field of labor relations is the same as that evolved by the common law. The employer may use its disciplinary power to deter departures from supervisory duty and to punish them when they occur, but it may not assume that such departures are certain to occur. The general interest of employees in the welfare of the union to which they belong is certainly not such an interest as would disqualify them from acting faithfully to advance the interests of the employing enterprise. This Court made the point clearly in the *Associated Press* case, 301 U. S. 103. There the employer-publisher contended that were editorial writers permitted to organize and bargain collectively, their loyalty to their union and to labor-union principles would tend to induce them to color and distort their writings. The Court answered this point briefly (301 U. S. at p. 132):

> The act does not compel the petitioner to employ anyone; it does not require that the petitioner retain in its employ an incompetent editor or one who fails faithfully to edit the news to reflect the facts without bias or prejudice * * *. The petitioner

> is at liberty, whenever occasion may arise, to exercise its undoubted right to sever his relationship for any cause that seems to it proper save only as punishment for, or discouragement of, such activities as the act declares permissible.

In *National Labor Relations Board* v. *Armour & Co.*, 154 F. 2d 570, certiorari denied, October 14, 1946, No. 375, this Term, a case involving confidential plant clerks, the Circuit Court of Appeals for the Tenth Circuit, after noting that the argument here advanced applies equally to "any employee who serves faithfully," stated (p. 574):

> Certainly, exclusion from the benefit of the Act is not the price of honest and faithful service. It is true that the knowledge which the plant clerks obtain is of a highly confidential nature and that its disclosure to competitors of Armour might result in injury to Armour. But, we do not think those facts take the plant clerks outside the term, "employee." Armour may require, as a condition of employment, that the plant clerks treat such information as confidential.

So, in the instant case, the Board pointed out that nothing in the statute or its administration "protects disloyal or inefficient employees and the Company may always resort to its normal disciplinary powers to insure faithful and efficient job performance by its employees of all ranks" (R. III, 1811). This power of discipline, like the power

of principals and stockholders to resort to the courts to recover against faithless agents and directors, affords adequate protection to the interests of enterprise. Thus, the Board, like the common-law courts in analagous situations, considered both the interest of the employer in faithful performance of supervisory duty, and the interest of foremen in dealing on their own behalf collectively rather than individually, and concluded that both interests could be safeguarded under the statute by granting protection to the foremen's self-organizational activities while at the same time recognizing that the employer's power to discipline and discharge for breach of duty remains unimpaired. In balancing these interests and reaching the conclusion which it did, the Board performed the function entrusted to it by Congress in a wholly reasonable manner. *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U. S. 793; *National Labor Relations Board* v. *Illinois Tool Works*, 153 F. 2d 811 (C. C A. 7).

2. Withholding of statutory protection would not insulate the foremen from pressures caused by rank and file or supervisory organization "

To eliminate all of the company's fears and eradicate entirely the possibility of hidden influences, it would be necessary to isolate the foreman completely from the industrial scene. The rem-

edy urged by ~~respondent~~ the Company, withholding the protection of the Act, would not achieve its end. Foremen would still be legally free to organize and, where they did so, feelings of loyalty to their organization would exist.

Moreover, even if foremen were prohibited by law from organizing, they could not be precluded from having feelings, perhaps quite lively ones, about the rank and file unions in their plant. They could not be forced to abjure, immediately on promotion out of the ranks, the feelings which they entertained about the rank and file union to which, until then, they either belonged or were opposed. And their day-to-day dealings with the rank and file, both on a social basis and in their capacity as supervisors, might change, but would certainly not eradicate, their feelings with respect to the organization which plays a vital role in the plant. Specifically, one foreman may believe that his wages will rise only if the production workers succeed in getting a raise. Another may feel that success on the part of the production workers will make the employer less generous to his classification. Either one may attempt, improperly, to further or oppose the interests of the rank and file, but this possibility would not be increased by the establishment of collective bargaining relationships between employers and supervisors. Indeed, the availability of self-organization would tend to make foremen less dependent on the

assistance of others. If foremen could not hope to bargain about their working conditions through their own organizations, they would be forced to view their fortunes only in terms of the conditions secured by the collective action of the rank and file. Surely, in such a situation, the temptation to further or hinder the struggles of the rank and file organizations would be no smaller than it would be if the foremen could look to their own organizations to further their interests directly. The possibility which must in fact be causing the company concern is not that foremen will misuse their positions as foremen to assist the rank and file but rather that they may, at such times as they consider it in their interest to do so, make common cause with rank and file unions to engage in parallel concerted activities. But if they should do so, they would be in no different position from employees in two or more rank and file bargaining units engaging in a joint strike. Indeed, the process of orderly collective bargaining which the Act guarantees may eliminate that eventuality altogether. Denying the protection of the Act to foremen will not prevent strikes. It will merely add another provocative cause of strikes.

In sum, the conflict of interest which necessarily exists merely because foremen work for employers cannot be resolved by denying the protection of the Act, and specifically its protection

of the right to bargain collectively. Moreover, the fact that self-organization by foremen for the purpose of collective bargaining is not prohibited by law makes it apparent that to deny bargaining rights is, as the Board has held (cf. R. III, 1813–1814), "a policy of negation, settling none of the problems created by foremen's unionization and further increasing labor strife" (*Matter of L. A. Young Spring & Wire Corp.*, 65 N. L. R. B. 298, 304).

3. Collective bargaining between foremen and employers leaves ample room for the protection of employer interests

In another important respect, the Company's effort to attribute disastrous results to the Board's decision fails to square with reality. It assumes that, once its foremen are represented by a labor organization, that organization would be in a position to "force top management to accept its decisions or the decisions of some outside third party" (Brief before the Board in the representation case, p. 82). This is but a special application of the objection sometimes voiced by employers to having "some outsider come in and tell me how to run my business." The simple answer is that if the Company bargains with the Association, the conditions which prevail will be, not those demanded by the Association, but those arrived at in the process of collective bargaining. There is

certainly no reason to assume either that the Association will make unreasonable demands upon the Company or that the Company will be required to yield to such demands if made. Cf. *Jones & Laughlin Steel Corp.* v. *National Labor Relations Board*, 146 F. 2d 833, 835 (C. C. A. 5), certiorari denied, 325 U. S. 886.

The Company attempts to illustrate its point by asserting that since unions generally and the Association in particular believe in the principle of seniority, bargaining with the Association would result in "a system under which [foremen] could only advance by passage of time" (brief before the Board in the representation case, p. 81). It is manifestly absurd to presume that the Association would insist upon or secure any such arrangement. The process of collective bargaining is sufficiently flexible to allow full play to such factors as ability in the selection of supervisory employees. The precise weight to be given to the factor of seniority is susceptible to discussion and agreement. It cannot be assumed that, once the Company bargains collectively with its foremen, it will be required to apply the same seniority standards to them as it applies to rank and file employees. The Company concedes that it is now its policy "to recognize length of service where merit is equal". (Brief before the Board in the representation case, p. 81.) The institution of collective bargaining with the Association

would in all probability require no change in this policy. This is shown by the terms of the Association's contract with the Ford Motor Company (Section 10 (a), which provides (R. I, 86, III, 1334):

> In matters of promotion and demotion the determining factors shall be ability and seniority. When ability is considered to be equal, seniority shall govern promotions and demotions. The final determination shall be ability. If the company's determination of this factor shall be deemed to be unreasonable, any claimed violations of this provision may be reviewed and determined through the grievance procedure.

There is no reason to anticipate insuperable obstacles to a similar reconciliation of interests applicable to the company's foremen.

The history of the status of foremen in the printing trades illustrates the accommodation of trade union practice to the necessities of full production. A careful study of the development describes the situation as follows:[52]

> In early years, many publishers were strongly opposed to having their representatives owe allegiance to the union. As contracts became more inclusive, however, and rights of both employers and unions more clearly defined, publishers in gen-

[52] *How Collective Bargaining Works*, Twentieth Century Fund (New York, 1942), pp. 67, 68, 147.

eral ceased to object to the foreman law. They are now chiefly concerned lest foremen should be subject to union discipline for differing with the local union in the interpretation of the terms of a contract. The internationals generally recognize the justice of the publishers' position and a method is provided for the joint settlement of such disputes. The unions do not, however, forego their right to discipline foremen for disobeying laws relating to internal union matters, or for deliberately disregarding union rules. Although there is still occasional complaint that some locals attempt, by disciplining foremen, to enforce conditions not provided for in contracts, the practice is not so common as to constitute a major issue.

The foreman represents the employer in dealing with grievances arising in his department. He settles many day-to-day grievances and complaints with the chapel chairman, without recourse to the joint standing committee or to arbitration.

* * * *

In book and job printing the union membership of foremen is so thoroughly established that it does not become an issue except occasionally in a newly organized plant. It is clearly recognized that the foreman's first responsibility is to management. His duty to the union is to administer the agreement fairly in the plant. * * *

In the railroad industry, in which supervisory employees have been extensively organized for many years, the relations of the unions to management have been carefully worked out and the National Mediation Board has not considered the inclusion of such employees within rank and file locals to be a problem.[53]

The experience of these industries shows conclusively that an accommodation can be found between trade-union practices and a supervisory employee's responsibility to management, even in those instances in which the supervisory employee is a member of a rank-and-file union, and irrespective of whether he is a member of a separate local of the union, or of the same local as the rank-and-file employees whom he supervises.

The Company, rejecting completely the prospect that foremen who are union members will remain, as they have thus far remained, faithful representatives of management with respect to the production process, threatens that if the Board's position is sustained management will be required to divest foremen of their authority and responsibility. Relying on the unfounded assumption that only in this manner can disaster be avoided, the Company then complains that this avenue of escape is foreclosed to it by the Board's holding in *Matter of Allis-Chalmers Manufacturing Co.*, 70 N. L. R. B. 348, that a change in the duties and authority of foremen *because* they

[53] Bureau of Labor Statistics Bull. No. 745 (*supra*, p. 18, n. 10), p. 4.

joined a union is discrimination proscribed by Section 8 (3).

The Company attacks this holding on the ground that it constitutes an attempt by the Board "to dictate to management who its supervisors must be and what their powers, rights, and privileges must be" (Brief, p. 85). This interpretation of the Board's decision is, to say the least, unwarranted. The *Allis-Chalmers* case is simply an application of the self-evident and uniformly accepted principle that the worsening by an employer of the terms or conditions of employment of any employee because that employee has joined a labor organization discourages membership in the labor organization and *per se* constitutes illegal discrimination. Its effect, as applied to foremen, is no different from its effect as applied to rank-and-file employees. It means merely that the employer may not penalize employees for attempting to bargain collectively. A contrary holding would permit employers to achieve by indirection the exemption of employees from the benefits of the Act, the very result which the Company has thus far unsuccessfully sought.

Resolution of any difficulties which may arise from the unionization of foremen is, as we have said, a proper subject for collective bargaining. But the Company may not, in advance, act on the assumption that difficulties will prove insuperable through the normal processes of collective bar-

gaining. Such an assumption, destructive of the premises of the Act and of the statutory rights of the foremen, has been rejected by the courts in this as in other cases.[54]

4. Experience refutes the Company's fears as to the loyalty of its foremen

Experience has fully justified the conclusion of the Board and the courts that the inherent honesty of employees, coupled with the retention by the employer of power to discharge and discipline, wholly safeguards all legitimate employer interests. The history of the extension of collective bargaining rights to plant guards aptly demonstrates the point. As early as 1936, plant guards who had joined labor organizations sought the protection of the Act. Employers objected that such guards, who were often deputized as special police officers by local authorities, should not be deemed "employees" within the meaning of the Act.[55] The

[54] R. III, 2106; *National Labor Relations Board* v. *Armour & Co.*, 154 F. 2d 570, certiorari denied, October 14, 1946, No. 375, this Term.

[55] *Matter of Luckenbach Steamship Co.*, 2 N. L. R. B. 181 (August 21, 1936); *Matter of American-Hawaiian Steamship Co.*, 10 N. L. R. B. 1355 (January 21, 1939); *Matter of Aguilines, Inc.*, 12 N. L. R. B. 366 (April 20, 1939); *Matter of Federal Shipbuilding and Drydock Co.*, 19 N. L. R. B. 313 (January 11, 1940), 20 N. L. R. B. 270 (February 8, 1940); *Matter of Yellow Truck and Coach Co.*, 39 N. L. R. B. 14 (February 19, 1942); *Matter of General Motors Corp.*, 39 N. L. R. B. 1198 (March 25, 1942); *Matter of American Brass Co.*, 41 N. L. R. B. 783 (June 8, 1942); *Matter of Phelps Dodge Copper Products Corp.*, 41 N. L. R. B. 973 (June 15, 1942).

objection was uniformly predicated upon the assertion that if plant guards were permitted to join and be represented by labor organizations composed of rank and file employees over whom the guards exercised monitorial authority, the loyalty of the guards would be divided, their attention to duty (when fellow unionists were concerned) would become lax, and the employer could no longer rely upon the guards to perform their functions properly. This contention was elaborately pressed upon the Board in the very first plant guard case, *Matter of Luckenbach Steamship Co.*, 2 N. L. R. B. 181, 188–189 (August 31, 1936). But the evidence introduced in support disproved rather than proved it. As the Board pointed out "the only specific instance [of alleged inefficiency attributed to a plant guard's union affiliation] testified to was where a watchman who was a member of the Union had promptly reported to his employer * * * the longshoreman whom he detected pilfering." 2 N. L. R. B. at 188. The Board thereafter had occasion to observe the effect of collective bargaining by these guards upon the employer's legitimate interests in faithful performance. After the Board's certification of the union as bargaining representative for the plant guards, a majority of the employers involved in the *Luckenbach* case entered into a contract with the union covering both guards and the production employees. In a proceeding under Section 10 of

the Act, brought against those employers who had refused to honor the certification, the Board noted that although a year had elapsed since execution of the contract between the other employers and the Union, no attempt was made to show that "the operation of that agreement has not been satisfactory". *Matter of American Hawaiian Steamship Co.*, 10 N. L. R. B. 1355, 1362–1365 (January 21, 1939).

The bargaining pattern exemplified by the contract referred to in the *American-Hawaiian* case has since become commonplace in American industry. Neither managerial nor public interests have been adversely affected, and despite dire predictions that self-organization and collective bargaining by plant guards would result in undermining plant discipline and security, no such condition has eventuated. The reason is obvious. Labor organizations fully recognize the impropriety of making demands upon their members which are in any sense incompatible with the employees' loyal and faithful performance of duties to the employer. Thus collective agreements negotiated between representatives of plant guards and employers illustrate that management's fears that labor organizations will require employees to use their positions to further union interests rather than the interests of the employer are easily dispelled in the terms of the ultimate bargain. (Compare Chairman Herzog's

concurring opinion, R. I, 35–36.)[56] The Company admits that its own plant guards, whose organization several years ago it opposed on the same ground as it now opposes the unionization of its foremen,[57] have not become any less faithful or efficient (R. II, 1063–1065, 1205–1206). So, too, the Company's foremen had been members of the Association for 2½ years, when the hearing was held, surely long enough for any deficiency resulting from divided loyalty to have manifested itself. Yet the Company admitted that its foremen had not been disloyal or inefficient in the performance of their duties (R. II, 1044, 1065–1066, 1081–1084, 1212–1213).

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[56] We set forth in Appendix B, pp. 123–131, *infra*, clauses contained in collective agreements between representatives of plant guards and employers which deal with the special duties and responsibilities of plant guards. These contract clauses are collected in a pamphlet published by the American Iron & Steel Institute entitled, *Classified Provisions of Seventeen Collective Bargaining Agreements Covering Plant Protection Employees in Industrial Plants* (New York, Sept., 1944), pp. 177–181. Similar clauses dealing with the special functions and responsibilities of foremen can easily be drafted. The problems presented with respect to faithful performance by foremen of duties affecting rank and file employees do not differ significantly from the problems presented and met in this fashion with respect to faithful performance by plant guards. Indeed, the no-strike clauses necessary to protect management interests in the case of plant guards may not be equally necessary in the case of foremen. In any event, these are problems for collective bargaining.

[57] *Matter of Packard Motor Car Co.*, 47 N. L. R. B. 932. Cf. *Matter of Chrysler Corp.*, 44 N. L. R. B. 881.

The Company, therefore, errs in assuming that a foreman's union would make demands upon the foremen incompatible with their duty to the employer. It errs in assuming that if improper demands were made, the foremen would not resist them. It errs in assuming that if foremen succumbed to such hypothetical improper demands, the employer would be helpless to discipline them. It errs in assuming that representatives of foremen would make improper demands upon the employer, and that the employer would have to yield to those demands. Finally, it errs in assuming that if protection of collective-bargaining rights is denied the foremen, the situation which it envisages would automatically be corrected.

F. *The Company may not require its foremen to bargain individually rather than collectively*

The Company's objection stems basically from its misconception of the duty which employees generally owe to their employer. In bargaining with the employer for the establishment of his own working conditions, the employee cannot owe a duty of loyalty to the employer (R. III, 1811–1812; I, 32–33). Hence, it cannot be a breach of any duty for employees to decide that they prefer to face their employer collectively rather than to continue to accept his unilateral decisions as to their working conditions. This the Company fails to realize, since it takes the position, as stated by its Industrial Relations Manager, that

it is a breach of loyalty for *any* employee to strike to improve his working conditions (R. II, 998, 1081–1082), and that the only difference between a rank-and-file strike and a strike by supervisors is in the degree of "disloyalty" (R. II, 1084). The Company's argument that Congress did not intend foremen to engage in the "disloyal" act of striking necessarily assumes that Congress did intend to permit rank-and-file employees to indulge in such "disloyalty".

The dilemma can be avoided only by recognizing that Congress rejected entirely the idea that self-organization and strikes were inconsistent with the employees' duties to the employer. This is shown by the fact that the Company's arguments are indistinguishable from the arguments of those who challenged the premises and objectives of the Act prior to its adoption on the ground that unrestricted competition among employees is desirable and necessary, that self-organization for the purpose of collective bargaining tends to restrain such competition, and that such organization should therefore be banned.[58] Thus the Company argued in its brief before the Board in the representation case, p. 73, that "A foreman should operate as an individual. He is * * * in

[58] Webb, Sidney & Beatrice, *Industrial Democracy* (London, 1920), pp. 281–282; Twentieth Century Fund, *Labor and the Government* (New York, 1935), p. 57; Daugherty, Carroll R., *Labor Problems in American Industry* (Boston, 1936), pp. 543–544; Cummins, E. E., *The Labor Problem in the United States* (New York, 1935), p. 233.

competition with his other foremen—this competition is necessary if the standards of the product are to be maintained." And again (p. 81), "if [the foreman] feels that he cannot stand on his own feet and fight his way up the ladder—if he wishes to trade his opportunity to advance as an individual for the questionable security of collective bargaining, he can do so by remaining with or returning to the rank and file. Such a man would not be a good foreman."[59] Suffice it to say that these arguments, which are obviously as applicable to rank and file employees as to foremen, were presented to and were found wanting by Congress;[60] that the policies of the Act are posited on precisely the opposite premise; that the Board was not empowered by Congress to reappraise its judgment and decide among these conflicting economic theories anew; and that, while the Company may prefer to select as foremen only those who are averse to self-organization, just as many employers preferred, before the Act was passed, to hire employees who were willing to forego unionization, Congress may and has forbidden it to do so.

[59] That the last sentence may well have been written with tongue in cheek would appear from the Company's admission that its foremen who joined the Association and thereby demonstrated, on the Company's theory, that they wished "to trade [their] opportunity to advance as . . . individual[s] for the questionable security of collective bargaining," were, and have remained, good foremen. (R. II. 1044, 1065–1066, 1081–1084, 1212, 1213.)

[60] See note 45, p. 64, *supra*.

G. *The Court need decide only whether the Board's determination that foremen are "employees" has a "reasonable basis in law"*

The issue concerning the status of foremen as "employees" under the Act does not call for *de novo* decision by this Court. The Board, as the facts set forth in the Statement (*supra*, pp. 6–17) show, thoroughly considered all of the available evidence as it bore on the three controlling factors mentioned by this Court in the *Hearst* case, 322 U. S. 111, 129; namely, "the circumstances and background of employment relationship" in the industry involved (R. III, 1789–1802), "the abilities and needs of the [foremen] for self-organization and collective action" (R. III, 1802–1805); and "the adaptability of collective bargaining for the prompt settlement of [foremen's] disputes with their employers" (R. III, 1813–1814, I, 35–37). After extensive deliberation, it arrived at the conclusion, premised upon reasoning thoroughly articulated in its decisions,[61] that foremen must be deemed to be employees within the meaning of the Act. Referring to such a situation, this Court, in the *Hearst* case, said (322 U. S. at pp. 130–131) that:

> In making [the Board's] determinations as to the facts in these matters conclusive, if supported by evidence, Congress en-

[61] See *Securities and Exchange Commission* v. *Chenery Corp.*, 318 U. S. 80; *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U. S. 793.

trusted to it primarily the decision whether the evidence establishes the material facts. Hence in reviewing the Board's ultimate conclusion, it is not the court's function to substitute its own inferences of fact for the Board's, when the latter have support in the record. *N. L. R. B.* v. *Nevada Copper Corp.*, 316 U. S. 105; cf. *Walker* v. *Altmeyer*, 2 Cir., 137 F. 2d 531. Undoubtedly questions of statutory interpretation, especially when arising in the first instance in judicial proceedings, are for the courts to resolve, giving appropriate weight to the judgment of those whose special duty is to administer the questioned statute. *Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294; *United States* v. *American Trucking Assns.*, 310 U. S. 534. But where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited. Like the Commissioner's determination under the Longshoremen's & Harbor Workers' Act,[35] that a man is not a "member of a crew" (*South Chicago Coal & Dock Co.* v. *Bassett*, 309 U. S. 251) or that he was injured "in the course of his employment" (*Parker* v. *Motor Boat Sales*, 314 U. S. 244) and the Federal Communications Commissioner's determination[36] that one com-

[35] 44 Stat. 1424, 33 U. S. C. § 901, *et seq.*

[36] Under § 2 (b) of the Communications Act of 1934, 48 Stat. 1064, 1065, 47 U. S. C. § 152 (b).

pany is under the "control" of another (*Rochester Telephone Corp.* v. *United States*, 307 U. S. 125), the Board's determination that specified persons are "employees" under this Act is to be accepted if it has "warrant in the record" and a reasonable basis in law.

We believe that the Board's determination in the instant case that the Company's foremen are "employees" within the meaning of Section 2 (3) of the Act is clearly within these controlling standards.

II

THE BOARD COULD PROPERLY FIND THAT THE FOREMEN CONSTITUTE AN APPROPRIATE UNIT FOR THE PURPOSES OF COLLECTIVE BARGAINING

Apart from its contention that foremen are not employees within the purview of Section 2 (3) of the Act, the Company contends further that the Board should deny to them the protection of Section 8 (5) of the Act, by holding that no matter how such foremen may be grouped for purposes of collective bargaining they cannot constitute "a unit appropriate for the purposes of collective bargaining" within the meaning of Section 9 (b) of the Act. This contention in substance is that although foremen are employees, and are as such protected by the Act against employer infringements upon their organizational rights through the tactics of interference, domination, and discrimination, they should nevertheless not be pro-

tected against infringements upon those rights accomplished by the refusal of employers to recognize and deal with their duly chosen representatives. The Company urges that the Board is empowered to achieve this result by virtue of the provision in Section 9 (b) which imposes upon the Board the duty of determining in each case whether a particular unit alleged to be appropriate will "insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act." This reference to the effectuation of the policies of the Act, the Company argues, authorizes the Board not merely to select among alternative units the one most likely to further the statutory objectives, but to disapprove every possible type of unit into which these employees may assemble and thereby prevent the establishment of the condition precedent to the employer's obligation to bargain under Section 8 (5).

In 1943, a majority of the Board, as then constituted, held for the first time in *Matter of Maryland Drydock Co.*, 49 N. L. R. B. 733, that it had the power which the Company attributes to it. There, and in several subsequent cases,[4] the Board exercised that power by denying certification to representatives of certain supervisory employees. In its decision in the representation proceeding

[4] *Matter of Boeing Aircraft Co.*, 51 N. L. R. B. 67; *Matter of Murray Corp. of America*, 51 N. L. R. B. 94; *Matter of General Motors Corp.*, 51 N. L. R. B. 457.

in the instant case, the Board, without reexamining the question of power, and assuming that it could hold respondent's foremen to be outside any appropriate unit, held that it would not, in the exercise of its discretion, thus deny certification to the Association (R. III, 1796–1798, 1809–1810, 1813–1814). In its subsequent decision in the complaint proceeding, it adhered to that view (R. I, 19–31), although the new member of the Board, Chairman Herzog, indicated his belief that the assumption on which the Board's decision was based was "open to question" (R. I, 34).

Shortly after its decision in the instant case, the Board, in *Matter of L. A. Young Spring and Wire Corp.*, 65 N. L. R. B. 298, took occasion to reexamine the entire statutory scheme, as well as the specific provisions upon which the Company relies. It there concluded that Section 9 of the Act was intended to be a vehicle not for denying but rather for promoting collective bargaining rights, and that it had no power to deny foremen those rights by excluding them from appropriate bargaining units.

We shall show that the Board's refusal to deny certification to the Association in the instant case was proper both on the theory that it lacked power to deny such certification and on the theory that, having such power, its refusal to exercise it was not an abuse of discretion.

A. The Board has no power to deny to foremen who are "employees" within the meaning of the Act statutory protection of the right to bargain collectively through freely chosen representatives by holding that they cannot constitute an appropriate bargaining unit

The terms of the Act do not admit of a construction which would empower the Board to suspend, with respect to any group of employees, the provisions of Section 8 (5) which requires employers to bargain collectively with freely chosen employee representatives. Yet that is just what the Company would have the Board do so far as its foremen are concerned.

Section 7 of the Act in terms confers upon all "employees" (as defined in Section 2 (3)) the rights "to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection." The Senate Report on the bill that became the Act makes it clear that the guarantee was so formulated for the purpose of "encouraging the practice of collective bargaining and protecting the rights upon which it is based." S. Rep. No. 573, 74th Cong., 1st Sess., p. 6. See also H. Rep. No. 1147, 74th Cong., 1st Sess., p. 8. In Section 8 (1) Congress accorded blanket protection of those rights against all forms of interference by employers. The re-

ports of the Congressional committees explain that the guarantees of Sections 7 and 8 (1) are not limited or restricted by the enumeration of unfair labor practices in other subsections of Section 8; those subsections merely "spell out with particularity some of the practices that have been most prevalent and most troublesome." S. Rep. No. 573, 74th Cong., 1st Sess., p. 9; H. Rep. No. 1147, 74th Cong., 1st Sess., p. 17; *Art Metals Construction Co.* v. *National Labor Relations Board*, 110 F. 2d 148, 150–151 (C. C. A. 2); *National Labor Relations Board* v. *Newark Morning Ledger Co.*, 120 F. 2d 262, 265, 266–267 (C. C. A. 3), certiorari denied, 314 U. S. 693. See National Labor Relations Board, *Sixth Annual Report* (1942), pp. 87–88. In particular, the Committees pointed out that Section 8 (5) was not a severable or independent part of the Act to be applied or withheld at will from employees who had been granted the right to self-organization and collective bargaining free from employer interference through the devices enumerated in the four preceding subsections of Section 8. Explaining the inclusion of Section 8 (5) in the Bill, the Senate Committee said (S. Rep. No. 573, 74th Cong., 1st Sess., p. 12):

> It seems clear that a guarantee of the right of employees to bargain collectively through representatives of their own choosing is a mere delusion if it is not accompanied by the correlative duty on the part

> of the other party to recognize such representatives as they have designated (whether as individuals or labor organizations) and to negotiate with them in a bona fide effort to arrive at a collective bargaining agreement. * * * Experience has proved that neither obedience to law nor respect for law is encouraged by holding forth a right unaccompanied by fulfillment. Such a course provokes constant strife, not peace.

And the House Committee noted, H. Rep. No. 1147, 74th Cong., 1st Sess., p. 20, that "The fifth unfair labor practice, regarding the refusal to bargain collectively, rounds out the essential purpose of the bill to encourage collective bargaining and the making of agreements."

The Company's contention, therefore, that the Board is empowered to read Section 8 (5) out of the Act insofar as one class of employees is concerned and is thereby empowered, in the words of the Senate Committee to make of their statutory rights a "mere delusion," cannot, in the light of this clear evidence of Congressional intention, be supported. This is emphasized by the fact that when a majority of the Board, in *Maryland Drydock* case, departed from Board precedent, and in effect adopted the view the Company now urges, circumstances proved the validity of the Senate Committee's observation that "Such a course provokes constant strife, not peace."[65]

[65] See note 7, pp. 16–17, *supra*.

In the face of this legislative history as to the purpose of Section 8 (5), only the clearest language would justify interpreting Section 9 (b) in the manner urged by the Company. But the language of Section 9 (b), particularly when read in the light of the other provisions of the Act, dictates precisely the opposite view, and the reports of the Congressional Committees concerning the purposes of that Section confirm beyond doubt the propriety of the Board's present construction. Section 9 (b) provides:

> The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

This language, as the Board pointed out in the *L. A. Young* case, 65 N. L. R. B. 298, 303,[36] "is language not of exclusion but of classification. We are to choose between alternatives: Whether the appropriate unit for collective bargaining purposes shall be the 'employer unit, craft unit, plant unit, or subdivision thereof.' The function of deciding the appropriate unit is a positive one. 'It is not a negative concept to be used as a means of denying all bargaining rights under the Act to a given group

[36] Compare the concurring opinion of Chairman Herzog in the instant case (R. I, 33–35).

of employees in all circumstances.'[67] Once the Board determines that certain individuals are 'employees' within the meaning of the Act, its sole remaining duty under Section 9 (b) is to group these 'employees' in that unit which will insure to them the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.' Under the power to define the unit, the Board may properly insist that foremen be organized in bargaining units apart from their subordinates, but it cannot ostracise them." The Board's view that

[67] The Board was here quoting from a decision of the New York State Labor Relations Board, *Matter of Bee Line, Inc.*, 6 N. Y. S. L. R. B. 686, 695, in which that Board discussed the phrasing of the State Act corresponding to Section 9 (b) (see R. I. 34). The New York Board's language appears in context as follows:

"The concept of appropriate unit is an affirmative one, intended to bring about the most desirable form of organization. It is not a negative concept to be used as a means of denying all bargaining rights under the Act to a given group of employees in all circumstances. Once it is determined that a group of persons are employees, they have a right under the Act and the Constitution of the State of New York to be placed in *some* appropriate unit—that one which will best facilitate their participation in the practice and procedure of collective bargaining."

The view adopted by the New York Board which has resulted in the certification of units of foremen and in the issuance of orders compelling employers to bargain collectively with representatives selected by a majority of the foremen in such units, has been approved by the New York courts. *New York State Labor Relations Board* v. *Metropolitan Life Ins. Co.*, 183 N. Y. Misc. 1064, 52 N. Y. S. (2d) 590, affirmed, 269 App. Div. 934, 58 N. Y. S. (2d) 343, affirmed, 295 N. Y. 838, 66 N. E. 2d 853.

it is empowered under Section 9 (b) to determine only the composition of voting groups of employees, and not whether employees shall exercise the franchise, finds abundant support in the criteria which Congress established to guide the Board in making unit determinations. Section 9 (b) instructs the Board to decide the appropriateness of bargaining units in such fashion as "to insure to employees the full benefit of their right to self organization and to collective bargaining, and otherwise to effectuate the policies of this Act." These criteria are clearly not satisfied by unit determinations which deny rather than "insure * * * the full benefit of * * * collective bargaining," or which frustrate "the policies of this Act," by preventing rather than "encouraging the practice and procedure of collective bargaining," the policy stated in Section 1 of the Act.

So too, the Board's holding in *Matter of Jones & Laughlin Steel Corp.*, 66 N. L. R. B. 386, 71 N. L. R. B., No. 203, that Congress did not empower it to restrict the freedom of choice of any unit of employees where such selection would not frustrate the statutory rights of other employees, comports strictly with the statutory language. The Board had earlier held in *Matter of Godchaux Sugars, Inc.*, 44 N. L. R. B. 874, 877, that as respects foremen this result is required by Section 1 of the Act which states the Congressional policy to encourage "the exercise by workers of full freedom of association, self-organiza-

tion, and designation of representatives *of their own choosing.*" [Italics supplied.]

The Board's view that the statute does not authorize it to impose limitations upon the range of choice of representatives open to employees is clearly supported by the decision of this Court in *Hill* v. *Florida,* 325 U. S. 538. In that case, the Court had before it a state statute which purported to restrict the field of those who could act as collective bargaining representatives of employees. The statute was held invalid on the ground that it conflicted with the rights guaranteed employees under the National Labor Relations Act. In so holding, the Court emphasized that the purpose of the National Labor Relations Act is "to encourage collective bargaining and to protect the 'full freedom' of workers in the selection of bargaining representatives of their own choice." And the Court explicitly stated at p. 541, that "Congress attached no conditions whatsoever to their freedom of choice in this respect. Their own best judgment, not that of someone else, was to be their guide. 'Full freedom' to choose an agent means freedom to pass upon the agent's qualifications." In the face of the clear mandate of the statute, and this Court's unambiguous holding, the Board was properly constrained to hold that it was no more empowered than was the State of Florida to substitute its judgment for that of the employees as to who should represent them, and to conclude that it

would not be justified in "reaching out for powers to place limitations on the right of foremen, who are employees, to bargain collectively through representatives of *their own* choice" [italics in original]. Chief Justice Stone, dissenting on other grounds in *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 313 U. S. 146, 171–172, pointed out that, "the function assigned to the Board is not the choice of the labor organization to represent a bargaining unit, for that is to be the free choice of the majority of the employees in some defined group of employees which the Board finds to constitute the appropriate unit."

B. Assuming that the Board had power to exclude foremen from bargaining units, its refusal to do so here was not arbitrary

We have summarized above (pp. 17–22, 36–37, 56–60, 66–89) the Board's reasons for concluding that, assuming that it had the power to hold that foremen did not belong in any bargaining unit, it would not so hold here. In brief, the Board held that the widespread organization of foremen which in fact existed required the Board to make available the peaceful procedures of the Act for the establishment of collective bargaining relationships (R. III, 1802–1805, 1813–1814); that unless the Board did so, strikes by supervisory employees to achieve recognition would become more numerous (*ibid.*); that the Company was not correct in asserting that

foremen had no need for collective bargaining (R. III, 1812–1813); and that the Company's foremen would not perform their task with less efficiency or fidelity if allowed to bargain collectively (R. III, 1811–1812). These conclusions of the Board were reinforced in the instant case by the fact that, as the Board found (R. III, 1806–1808), the labor organization seeking to represent the supervisory employees here was not affiliated with any labor organization representing rank and file employees. We submit that none of these conclusions of the Board is open to successful challenge.

We have already discussed the Company's contention that collective bargaining by foremen would impair their faithful performance of duty; we have shown that the Company's misgivings as to the integrity of its foremen are not justified and that, in any case, denial of the right to bargain collectively would not protect the foremen from the influence which the company fears (*supra*, pp. 66–89). Just as there is no reason to believe that Congress excluded foremen altogether from the protection of the Act because of doubts as to their loyalty, there is no reason to conclude that the Board acted arbitrarily in refusing to achieve the same result by excluding foremen from appropriate bargaining units. These considerations, as we have shown (*supra*, pp. 66–89) are valid even where foremen propose to bargain through affiliated unions. While the Board's

discussion of this point in its decision in this case (R. III, 1811–1812) did not rest to any extent on the independence of the Association (Compare *Matter of Jones & Laughlin Steel Corp.*, 66 N. L. R. B. 386, 71 N. L. R. B., No. 203), the result here reached is nevertheless reinforced by the fact that it is independent of any labor organization representing rank and file employees. Similarly, our earlier discussion of the Board's findings that foremen have a legitimate interest in collective bargaining (*supra*, pp. 56–60), and that denial of the right to such bargaining can only lead to, rather than prevent, industrial strife (*supra*, pp. 17, 35–37, 59–60), is also fully applicable here.

Even if the Board had been given the power, in the exercise of its discretion under Section 9 (b), of the Act to hold that the Company's foremen lay outside of any appropriate bargaining unit, it cannot be said that it exercised that discretion unreasonably in refusing to hold that the foremen here lay outside the pale of the Act's orderly procedures. *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 135; *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 113 F. 2d 698, 701 (C. C. A. 8), affirmed, 313 U. S. 146, 152. In determining bargaining units, the Board acts "to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of [the] Act" (Sec. 9 (b)). In addition, it is required in this, as in all of its

actions, to give weight to the general public interest for which it acts. *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 362; *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 265; *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 146 F. 2d 718, 721 (C. C. A. 6), certiorari granted, judgment vacated, and case remanded, 325 U. S. 838, decision on remand, 154 F. 2d, 932, certiorari granted, No. 418, this Term. The Board's decision clearly meets these tests. It advances the statutory policy of encouraging collective bargaining and puts a "premium on the conference table rather than on the harsh arbitrament of industrial war" (Chairman Herzog concurring in the instant case, R. I, 37). The Board analyzed in detail the Company's fears as to the effect of such a decision on the national economy as a whole (R. III, 1813–1814). It considered generally "the vital importance * * * to the Nation" of the issues raised (R. III, 1813). It concluded that to sustain the Company would be to invite industrial strife, "a state of affairs which the Nation can ill afford at this time and which the Act was designed to mitigate" (*ibid.*). Assuming the existence of power in the Board to make the exclusion urged by the Company, it cannot be said that in reaching the conclusion it did, the Board went beyond the limits of permissible discretion. To the contrary, actual experience has demonstrated that a reasonable exercise of dis-

cretion required the Board to reach that conclusion

III

THE BOARD PROPERLY FOUND THAT A SINGLE BARGAINING UNIT FOR THE FOUR GRADES OF FOREMEN WAS APPROPRIATE

The Board's finding that the appropriate unit within which the Company's supervisory employees may bargain collectively consists of all general foremen, foremen, assistant foremen, and special assignment men employed in the Company's Detroit plants likewise comports with the statutory standards provided by Congress for the Board's guidance. In holding that the four grades of foremen constitute a single appropriate unit, the Board relied upon the presence of factors which have traditionally been considered by the Board to justify grouping employees in a single unit. See, e. g., National Labor Relations Board, *Third Annual Report* (Gov't Print. Off. 1937), pp. 156–180. As the Court below pointed out (R. III, 2106):

> * * * The similarity of their obligations which compels them at times to act interchangeably, and of the privileges which set them all off from the workers of the rank and file, make them a group by themselves, necessarily experiencing the same needs, having in general the same conception of the relationship between them and their employer.

In addition is the equally important fact that all four grades of foremen have chosen to organize in a single organization, apart from rank and file workers on the one hand, and higher supervisory employees on the other. In considering this form and extent of organization by foremen, the Board also took cognizance of the fact that in modern industrial life, foremen of all varieties consider themselves as a single middle group between the rank and file and the policy making officials, (pp. 13–17, *supra*). The point is illustrated in the Constitution of the Foreman's Association (Article VI, Sections 2 and 3) which confines membership in that organization to employees who exercise supervisory powers but do not formulate managerial policy in negotiations with other employees (R. I, 88–89, III, 1346). Finally, it can hardly be doubted that the Board's finding comports with the statutory objective of equalizing the bargaining power of employees with that of employers and of according to employees the full benefit of their right to self-organization. The bargaining power of the foremen obviously will more nearly approximate that of their employer if all four grades of foremen bargain together than if each grade bargains separately.

The Company contended before the Board that the single fact that some grades of foremen exercise supervisory powers over foremen in other grades overcame the factors described above and required segregation of each grade of foremen

into a separate unit (R. III, 1819). The Board found, however, that this fact, standing alone, did not justify such a holding, particularly in view of the tenuous character of the authority exercised by one type of foreman over another, and the practical difficulties which would thereby be created (R. III, 1819–1820).

The Board has frequently found, both before and after its decision in the *Maryland Drydock* case, as it found here (R. III, 1819–1820), that a unit otherwise appropriate was not necessarily rendered inappropriate by the fact that certain of the employees in the unit exercised authority over other supervisory employees in the unit.[68] In the only case in which such a unit finding was

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[68] *Matter of International Mercantile Marine Co.*, 1 N. L. R. B. 384; *Matter of Lykes Bros. Steamship Co.*, 2 N. L. R. B. 102; *Matter of Black Diamond Steamship Corp.*, 2 N. L. R. B. 241; *Matter of Swayne & Hoyt, Ltd.*, 2 N. L. R. B. 282; *Matter of Grace Lines Inc.*, 2 N. L. R. B. 369; *Matter of Ocean Steamship Co.*, 2 N. L. R. B. 588; *Matter of New York & Cuba Mail Steamship Co.*, 2 N. L. R. B. 595; *Matter of Seas Shipping Co.*, 8 N. L. R. B. 422; *Matter of Standard Oil of New Jersey*, 8 N. L. R. B. 936; *Matter of New York & Cuba Mail Steamship Co.*, 9 N. L. R. B. 51; *Matter of Tidewater Associated Oil Co.*, 9 N. L. R. B. 823; *Matter of Cities Service Oil Co.*, 10 N. L. R. B. 954; *Matter of Aerovox Corp.*, 10 N. L. R. B. 652; *Matter of The Texas Co.*, 23 N. L. R. B. 1022; *Matter of A. H. Bull Steamship Co.*, 36 N. L. R. B. 99; *Matter of Carnegie Illinois Steel Corp.*, 37 N. L. R. B. 19; *Matter of Jones & Laughlin Steel Corp.*, 37 N. L. R. B. 366; *Matter of Dravo Corp.*, 39 N. L. R. B. 846; *Matter of Federal Mogul Corp.*, 66 N. L. R. B. 532; *Matter of Kelsey-Hayes Wheel Co.*, 66 N. L. R. B. 570; *Matter of Celotex Corp.*, 66 N. L. R. B. 744.

contested, the Board's order was sustained by the circuit court of appeals. *Jones & Laughlin Steel Corp. v. National Labor Relations Board,* 146 F. 2d 833 (C. C. A. 5), certiorari denied, 325 U. S. 886.[69] It is true that in the absence of other factors showing the appropriateness of such a grouping, the Board has excluded supervisors from units composed of rank and file employees.[70] That policy stems in part from the fact that the authority which supervisors exercise over rank and file employees normally lends coercive effect to their actions for or against organizational activities among subordinates and that for this reason what a supervisor "does or says towards helping or hindering in unionization is chargeable to the employer." *Jones & Laughlin Steel Corp.* v. *National Labor Relations Board,* 146 F. 2d 833, 834 (C. C. A. 5), certiorari denied, 325 U. S. 886. Equally important is the fact that there is little

[69] In *National Labor Relations Board* v. *Delaware-New Jersey Ferry Co.,* 128 F. 2d 130 (C. C. A. 3), the circuit court of appeals reversed a Board finding that a unit composed of captains and other licensed deck officers as well as unlicensed members of the crew was appropriate. The court's decision was not premised on the theory that the unit was inappropriate because it included supervisors of more than one level of authority, but was based solely on the ground that supervisory personnel should not be included in the same unit with rank and file employees. The decision, consequently, is of no direct relevance here.

[70] National Labor Relations Board, *Third Annual Report* (Gov't Print. Off., 1937) pp. 180–183; Daykin, Walter L., *Status of Supervisory Employees Under the Wagner Act,* 29 Iowa L. Rev. 297, 317–322.

community of interest between supervisors and rank and file employees; that the problems dealt with in collective bargaining by the two groups are distinct; that supervisors have organized apart from rank and file unions; and that rank and file employees normally do not desire to have supervisors in their bargaining units. Where these factors co-exist, the Board deems it advisable to maintain the separation of supervisors from non-supervisory employees insofar as self-organizational activities are concerned, and accomplishes this result by creating a separate bargaining unit for supervisory employees.[71] But the rationale of this policy itself indicates the basis for particular exceptions. Thus in industries like the printing trades, in which foremen have long joined together with rank and file employees for the purpose of collective bargaining, where representatives of rank and file employees are firmly established and have attained approximate equality of bargaining power with employers, the Board is of the opinion that the rank and file employees have comparatively little cause to fear reprisal if they act contrary to the supervisor's wishes unless the supervisors are acting, not in their own interests, but at the behest of,

[71] *Matter of People's Life Ins. Co.*, 46 N. L. R. B. 1115; *Matter of Swift & Co.*, 45 N. L. R. B. 209; *Matter of Southwestern Bell Tel. Co.*, 45 N. L. R. B. 1078; *Matter of Harmony Short Line*, 42 N. L. R. B. 757; *Matter of Union Collieries*, 41 N. L. R. B. 961; *Matter of Godchaux Sugars*, 44 N. L. R. B. 874; *Matter of Cramp Shipbuilding Co.*, 46 N. L. R. B. 115; *Matter of Murray Corp.*, 47 N. L. R. B. 1003.

or in the interests of, the employer. In such cases, the Board does not hold employers responsible for organizational activities of supervisors among rank and file personnel unless the employees have reasonable cause to believe that the employer has authorized or ratified the supervisors' activities.[72] Thus supervisors, in these instances, are placed on a parity with the rank and file whose organizational activities are likewise not binding upon employers unless authorized or ratified by them, and the Board recognizes their interest in unitary bargaining.[73] So too, the

[72] See *Matter of R. R. Donnelley & Sons Co.*, 60 N. L. R. B. 635, 638, note 4, enforced, 156 F. 2d 416 (C. C. A. 7), petition for a writ of certiorari filed, No. 790, this Term; *Matter of Jones & Laughlin Steel Corp.*, 66 N. L. R. B. 326, 71 N. L. R. B. 203.

[73] *Matter of Cullom & Ghertner*, 14 N. L. R. B. 270; *Matter of W. F. Hall Printing Co.*, 51 N. L. R. B. 640; *Matter of Country Life Press Corp.*, 51 N. L. R. B. 1362; *Matter of Union Bag & Paper Corp.*, 52 N. L. R. B. 591; *Matter of A. S. Abell Co.*, 54 N. L. R. B. 62; *Matter of Times-Mirror Co.*, 54 N. L. R. B. 787; *Matter of Service Printers, Inc.*, 54 N. L. R. B. 1082; *Matter of Proximity Mfg. Co.*, 54 N. L. R. B. 1179; *Matter of Cincinnati Daily Newspaper Publishers' Assn.*, 55 N. L. R. B. 571; *Matter of Leo Lichtenstein*, 55 N. L. R. B. 1429; *Matter of Rapinwax Paper Co.*, 56 N. L. R. B. 1774; Instances are not confined to the printing industry. See, e. g., *Matter of Campbell Machine Co.*, 3 N. L. R. B. 793; *Matter of Merrimack Mfg. Co.*, 9 N. L. R. B. 173; *Matter of Willys-Overland*, 9 N. L. R. B. 924; *Matter of Consumers' Power Co.*, 9 N. L. R. B. 742; *Matter of Richmond Hosiery Mills*, 8 N. L. R. B. 1073; *Matter of Jones Lumber Co.*, 3 N. L. R. B. 855; *Matter of J. C. Sanders Cotton Mill Co.*, 31 N. L. R. B. 298; *Matter of Harris Hub Bed & Spring Co.*, 13 N. L. R. B. 1236; *Matter of Coos Bay Lumber Co.*, 62 N. L. R. B. 93.

Board regards the relationship which exists between supervisors of various degrees of authority as decidedly different from that which normally exists between supervisors and rank and file employees. In the maritime and railroad industries the established patterns of self organization among supervisors include several levels of authority in single bargaining units,[74] and the Board has often found that masters, mates, and pilots, for example, on inland as well as on ocean going craft, may appropriately constitute a single unit.[75] As a corollary to such findings, the Board of course holds that all such classes of supervisors are free to participate in the organizational affairs of the employees in the unit, and that their conduct in this respect is not attributable to the employer unless authorized or ratified by him.[76]

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[74] Twentieth Century Fund, *How Collective Bargaining Works* (New York, 1942), pp. 938, 960, 963; Maritime Labor Board; *Report to the President and the Congress* (March 1, 1940), p. 106; Hoagland, H. E., *Wage Bargaining on the Vessels of the Great Lakes*, University of Illinois Studies in the Social Sciences, Vol. VI, No. 3 (Urbana, 1917); United States Department of Labor Bull. No. 745; *Union Membership and Collective Bargaining by Foremen*, pp. 6, 9; National Mediation Board, *Tenth Annual Report* (Gov't Print. Off., 1945), pp. 76–78.

[75] Cases cited note 68, p. 108, *supra*.

[76] See, e. g., *Matter of B. F. Goodrich Co.*, 64 N. L. R. B. 1303; *Matter of R. R. Donnelley & Sons Co.*, 60 N. L. R. B. 635, enforced 156 F. 2d 416 (C. C. A. 7), petition for a writ of certiorari filed, No. 790, this Term; *Matter of Jones & Laughlin Steel Co.*, 66 N. L. R. B. 386, 71 N. L. R. B., No. 203; cf. *Matter of Tennessee Copper Co.*, 5 N. L. R. B. 117, 119.

The decision in the instant case follows the pattern established by these earlier holdings.[77] Certainly it cannot be said in view of the Board's careful consideration of all of the factors bearing upon the question and its reasoned statement concerning the balancing of those factors which led it to decide as it did, that its conclusion is "impractical or unwise, and much less that it is unlawful" (*Jones & Laughlin Steel Corp.* v. *National Labor Relations Board,* 146 F. 2d 833, 835 (C. C. A. 5), certiorari denied, 325 U. S. 886), or lacking in *"rational basis." National Labor Relations Board* v. *Hearst Publications,* 322 U. S. 111, 135; *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board,* 313 U. S. 146; *May Department Stores* v. *National Labor Relations Board,* 326 U. S. 376; *Marlin-Rockwell Corp.* v. *National Labor Relations Board,* 116 F. 2d 586–587 (C. C. A. 2), certiorari denied, 313 U. S. 594; *National Labor Relations Board* v. *Clarksburg Publishing Co.,* 120 F. 2d 976, 980 (C. C. A. 4); *National Labor Relations Board* v. *Chicago Apparatus Co.,* 116 F. 2d 753, 755 (C. C. A. 7); *National Labor Relations Board* v. *Lund,* 103 F. 2d 815, 819 (C. C. A. 8); *International Ass'n of Machinists* v. *National Labor Relations Board,*

[77] The cases cited in its decision (R. III, 1820, n. 31), which the Board here overruled, of course, marked a departure from the pattern outlined above.

110 F. 2d 29, 34–35 (App. D. C.), affirmed, 311 U. S. 72.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

GEORGE T. WASHINGTON,
Acting Solicitor General.

GERHARD P. VAN ARKEL,
General Counsel,

MORRIS P. GLUSHIEN,
Associate General Counsel,

A. NORMAN SOMERS,
Assistant General Counsel,

RUTH WEYAND,

MOZART G. RATNER,
Attorneys,
National Labor Relations Board.

JANUARY 1947.

APPENDIX A

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are as follows:

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions,

by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

SEC. 2. When used in this Act—

* * * * *

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as

amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

* * * * *

(9) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

* * * * *

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to Section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under Section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to Section 10 (c) is based

in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this Section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

SEC. 10. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the

question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if

application was made to the district court as hereinabove provided, and by the Supreme Court of the United States and upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

APPENDIX B

PROVISIONS OF COLLECTIVE BARGAINING AGREEMENTS RELATING TO THE DUTIES AND RESPONSIBILITIES OF PLANT PROTECTION EMPLOYEES

American Steel and Wire Company of New Jersey and United Steelworkers of America (C. I. O.); Agreement Dated October 1, 1943

The Union recognizes that it is the responsibility of the Plant Protection employes to familiarize themselves with the shop rules, including safety regulations established by the Company and other regulations established by governmental agencies, and to report all violations thereof. The Union agrees that the Plant Protection employes shall discharge their duties, as assigned to them impartially and without regard to any union or nonunion affiliation of any employe of the Company, and that failure to do so constitutes sufficient cause for discipline up to and including dismissal, and for reporting such cases to the proper military authorities.

The Union recognizes that it is the responsibility of the Plant Protection employes to guard and protect the employes and their property while on plant property; the plants, premises, material, facilities, and property of the Company at all times and under all circumstances.

The Union agrees that its members shall faithfully discharge this responsibility, and during the life of this Agreement, that it will not cause, or

permit its members to cause, nor will any member of the Union take part in any strike, sit-down, stay-in, stoppage of work or other interference with or refusal to perform their duties regularly assigned to them. The Union further agrees, in the event of any controversy between the Company and any other group or organization of its employes, resulting or threatening to result in any strike, stoppage of work or other interference with production, that its members will continue to report for duty, remain at their posts, and in the regular manner, discharge the duties assigned to them. The Company reserves the right to cancel this Agreement in the event of any violation of this section and to discipline any employes who engage in such violations.

Aviation Corporation and Amalgamated Plant Protection Local Union, No. 114 Affiliated With the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Agreement Dated August 26, 1943

It is realized by the parties hereto that the adequate and continuous protection of the Company's Plant, premises and products, is of paramount importance, and each party agrees that there shall be no interference whatsoever in the maintenance of satisfactory plant protection so long as required by the Company, and Plant Protection Employes covered by this agreement shall continue to perform their duties irrespective of a strike of other Unions, other Locals of this Union or other Locals of the CIO or other Unions, or employes at the Company's Plant.

When necessary to instruct Plant Protection Employees as to their duties in connection with suspected plant sabotage or thievery or other unlawful or irregular acts and such instructions are deemed confidential by the Company or any Public Officer, such instructions and information shall be so delivered to Plant Protection Employees, and shall not be disclosed by them to the Union, Union Officers, or others. Any such necessary instructions shall be given directly to each individual guard by the chief of guards or other representatives of the Plant Management. Any Plant Protection Employee violating this rule will be subject to discipline up to and including dismissal.

Should any difference arise between the Company and the Union as to the meaning or application of the provisions of this Agreement as to hours of work, rates of pay, or conditions of employment, or should any trouble or controversy of any kind arise in, or with respect to the plant as between the Company and the Union, there shall not on account or by reason of such difference, controversy, or trouble, be any strike, suspension, or slow-up of work at the Plant, either prior to or during efforts to settle such differences, controversies, or trouble, or after the settlement thereof but all such differences, controversies, or troubles shall be settled with utmost dispatch, and only in the manner set forth under Grievance Procedure.

Bethlehem Steel Company and Guards Local Union No. 23332 and American Federation of Labor, Agreement Dated December 13, 1943

The Union recognizes and agrees that the Employees covered by this Agreement have a special,

confidential, and direct responsibility to the Company requiring:

(a) That such Employees completely and diligently devote themselves to the interests of the Company.

(b) That such Employees familiarize themselves with and comply with all police, property protection, and safety rules, regulations, and orders relating to the Plant and all directions and instructions of the Management of the Company relating to the Plant.

(c) That such Employees enforce said rules, regulations, orders, directions, and instruction and faithfully report to the Management of the Company all infringements or violations thereof and all other information as to activities detrimental to the Company, its plants, or its employees.

(d) That such Employees keep confidential and do not divulge to any person other than the Management of the Company (or the United States Army if so required during the war emergency) all information obtained from any source having any bearing upon the Plant, its operations, or personnel.

(e) That such Employees fulfill and discharge their duties diligently, conscientiously, and impartially and without regard to any union or non-union affiliation of any employee or employees of the Company or any other person or persons, and shall not engage in union activity on the property of the Company or on Company time.

(f) That such Employees conduct themselves at all times, both on and off duty, in accordance with the confidence and trust reposed in them.

(g) That such Employees at no time engage in any strike, mass-quit, work-stoppage, slow-down, sit-down, picketing, or any other conduct which may, in any way, interrupt or interfere with production at the Plant and that they will at all times fulfill and discharge their duties without regard to any strike, mass-quit, work-stoppage, slow-down, sit-down, picketing, or any other interruption of or interference with production at the Plant.

The Union agrees that failure on the part of any Employee or Employees to observe and fulfill such responsibilities shall be just cause for discipline by the Company up to and including summary dismissal.

Brewster Aeronautical Corporation and Local No. 365, U. A. W.–C. I. O. and the International Union U. A. W.–C. I. O., Agreement Dated April 1944

(a) The Union recognizes that the employees covered by this agreement are in direct charge of the lives and safety of a large number of workers in the plants of the Corporation and of the property of the United States. For this reason they have been organized into a semimilitary organization, which must of necessity be subjected to strict discipline. The Union agrees that there shall be no interference with the exercise of such discipline, and further that employees covered hereby shall not engage, or participate, in any strike or other stoppage of work. The Company shall not cause or sanction a lock-out.

(b) Guards employed under the terms of this agreement will be permitted to go through picket

lines, whenever, and wherever they shall be established, for the purpose of protecting lives and property, but in no case shall guards so working be permitted to do work normally performed by others or work other than that which is required in the performance of their normal duties.

(c) It is understood and agreed that the Union will not in any way interfere with the exercise by the guards of their full police powers in preserving order and protecting property, provided, however, that the guards covered by this agreement shall never be used as strike breakers or labor spies.

Columbia Steel Company and United Steelworkers of America (Local No. 1577), Agreement Dated August 21, 1943

The Union recognizes that it is the responsibility of the Plant Protection employes to familiarize themselves with the shop rules established by the Company and to faithfully report all violations thereof. The Union agrees that the Plant Protection employes shall discharge their duties, as assigned to them impartially and without regard to any union or nonunion affiliation of any employe of the Company, and that failure to do so constitutes sufficient cause for discipline up to and including dismissal, and for reporting such cases to the proper representatives of the War Department.

The Union recognizes that it is the responsibility of the Plant Protection employes to guard and protect the employes and their property while

on plant property; the plants, premises, material, facilities, and property of the Company at all times and to enforce the Company's rules. The Union agrees that its members shall faithfully discharge this responsibility, and, during the life of this Agreement that it will not cause, or permit its members to cause nor will any member of the Union take part in any strike, sit-down, stay-in, stoppage of work or other interference with or refusal to perform their duties regularly assigned to them. The Union further agrees, in the event of any controversy between the Company and any other group or organization of its employees, resulting or threatening to result in any strike, stoppage of work or other interference with production, that its members will continue to report for duty, remain at their posts, and in the regular manner, discharge the duties assigned to them. The Company reserves the right to discipline including discharge in accordance with Section 9 any employes who violate any provisions of this Section.

Tennessee Coal, Iron and Railroad Co. and United Steelworkers of America on Behalf of Local Union No. 2927, Agreement Dated June 9, 1943

The Union recognizes that it is the responsibility of the Plant Protection employees to familiarize themselves with the Plant Conduct Rules established by the Company, and to faithfully report all violations thereof. The Union agrees that the Plant Protection employees shall discharge their duties, as assigned to them impar-

tially and without regard to any union or non-union affiliation of any employee of the Company, and failure to do so constitutes sufficient cause for discipline up to and including dismissal, and for reporting such cases to the proper representatives of the United States Army.

The Union recognizes that it is the responsibility of the Plant Protection employees to guard and protect the employees and their property while on plant property, the plants, premises, material, facilities, and property of the Company at all times and under all circumstances. The Union agrees that its members shall faithfully discharge this responsibility, and, during the life of this Agreement, that it will not cause, or permit its members to cause, nor will any member of the Union take part in any strike, sit-down, stay-in, stoppage of work or other interference with or refusal to perform their duties regularly assigned to them. The Union further agrees, in the event of any controversy between the Company and any other group or organization of its employees, resulting or threatening to result in any strike, stoppage of work or other interference with production, that its members will continue to report for duty, remain at their posts, and in the regular manner, discharge the duties assigned to them. The Company reserves the right to cancel this Agreement in the event of any violation of this Section and discipline any employees who engage in such violation.

United States Rubber Co. and United Rubber Workers of America, Local Union No. 101, Agreement Dated February 3, 1943

It is realized by the parties hereto that the adequate and continuous protection of the Company's Plant, premises and products is of paramount importance and each party agrees that there shall be no interference whatsoever in the maintenance of satisfactory plant protection so long as required by the Company, and Plant Protection Employees covered by this agreement shall continue to perform their duties irrespective of a strike by other unions or employees at the Company's Plant, or for any other reason.

When necessary to instruct Plant Protection Employees as to their duties in connection with suspected plant sabotage or thievery and such instructions are deemed confidential by the Company or any public officer, such instructions and information shall be so delivered to Plant Protection Employees and shall not be given to the Union members or Officers or others. Any such necessary instructions shall be given directly to each individual guard by a direct representative of the Management. Any Plant Protection Employees violating this rule will be subject to discharge.

Any Plant Protection Employees who drink any alcoholic beverage on the Company's premises shall be subject to discharge, or report for work under the influence thereof shall be subject to disciplinary action by the Company.

U. S. GOVERNMENT PRINTING OFFICE 1947

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In the

Supreme Court of the United States

OCTOBER TERM, 1946

No. 658

PACKARD MOTOR CAR COMPANY,
a Michigan corporation,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

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BRIEF FOR FOREMAN'S ASSOCIATION OF AMERICA, CHAPTER No. 5, APPELLEE

WALTER M. NELSON,
Attorney for Appellee Association,
1438 Dime Building,
Detroit 26, Michigan.

Interstate Brief & Record Co., Cass Bldg., 457 Fort St. W., Detroit 26, Mich.

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I. OPINIONS BELOW

In the matter of Packard Motor Car Company (Representation Case) 61 N. L. R. B. 4, and In the matter of Packard Motor Car Company (Unfair Labor Practice) 64 N. L. R. B. 1212 (R. I 32, III, 1791) *National Labor Re-*

lations Board, Petitioner, Foreman's Association of America, Chapter No. 5, Intervenor, v. Packard Motor Car Company, Respondent, (6th C. C. A.) 157 F. (2d) 81-86 (R. III, 2096-2108). Petition for Rehearing denied 157 F. (2d) 87 (R. III, 21, 27).

II. STATUTES INVOLVED

N. L. R. A. 49 Stat. 409, 29 U. S. C., Sec. 151.

III. SUMMARY OF ARGUMENT

On the question as to whether foremen are Employees within the meaning of the National Labor Relations Act, a fair reading of the Act in the light of the history and present status of the Employer-Employee relationship is the most reliable basis for correct decision.

Introducing a new type of law by providing democratic procedure for determining and certifying collective bargaining agents of Employees leaves previous decisions and rules very little weight as against the plain words and purpose of the Act.

IV. ARGUMENT

1. Scope of Brief

The briefs filed by counsel for the Employer-Appellant and for the National Labor Relations Board as Appellee discuss a number of questions and cite authorities thought to be applicable thereto which will not be re-cited or discussed in this Brief.

The National Labor Relations Act brings something new into our law with the consequence that the claims of previous decisions, rules of construction and interpretation, principles analogous, and like contentions are so frail as to give little assistance. This is reflected in the relative brevity of the prevailing and dissenting Opinions of the 6th Circuit Court of Appeals.

Not even general knowledge of Labor Law is required to an understanding of this Act or for correct decision of the issue made by the petition of Foreman's Association of America for certification, the Answer of the Employer, and the proofs. What is needed is (1) a factory knowledge of the American Employment Relationship for the past fifty years and (2) a mental willingness to fairly read the Act.

2. Levels in Employer-Employee Relationship

A huge and expensive volume of assertion, special pleading and mere speculation has been indulged in the past five years by Employer interests who thereby betray nothing more than their complete lack of reconciliation to the idea of Employee organization in their own interest, to say nothing of orderly governmental procedure therefor. The mere volume of these assertions contrary to

ascertainable facts makes it necessary to consider briefly the interest, structure and functions of the principal parties in the American Employment Relationship.

Until the Petition for a Writ of Certiorari was filed in this case no serious effort had been made to escape the general alignment of the main levels of the Employer-Employee relationship in American mass-power production and distribution as:

A. Heretofore Accepted.

1. Ownership
2. Management
3. Supervision
4. Maintenance and Production

By early and frequent use of the phrase "foreman level of management" (Appellant's Brief p. 3, 5, 18) appellant's counsel seeks to telescope or merge the third subdivision into the second subdivision simply by the use of words. No enlargement of authority, additional function or increase of compensation prompts or supports this merger. It is done solely by easy phraseology, and the Employer-Employee relationship becomes:

B. As Claimed by Appellant.

1. Ownership
2. Management—Supervision
3. Maintenance and Production

This phrase, "foreman level of management" is noteworthy original composition as it is not at any place cited or quoted and it does not appear to have been used in any place cited or quoted and it does not appear to have been used in any Congressional Debate, Statute, Board or Court

decision or literature on the subject. It goes further than the *dicta* in the majority opinion of the 6th Circuit Court of Appeals in this case using equally easy phraseology, the "front line of management" (R. III, 2097).

Both phrases concede what the record overwhelmingly shows, namely, that Management and Supervision *are not* one and the same thing, that they are different and that there are generally in the American Employment Relationship three levels of "Employees" instead of two levels.

Without here going into the severe reductions in the authority and functions of Supervision in the last third of a century (R. III, 2098) by reason of ever more minute subdivision of labor, mechanization, multiplication of management departments, and organization of supervised labor, the record here supports a classification:

C. As to Function and Compensation.

1. Ownership—Investor-Speculator—
   Profits
   No Plant Knowledge or Skills
2. Managament—Sometimes a Stockholder—
   Bonus-Salary
   Little Plant Knowledge or Skill
3. Supervision—Salary or Hourly Rate
   Much Plant Knowledge, Skill and
   Experience
4. Maintenance & Production—Hourly Rate
   Plant Knowledge and Skills Without
   Management or Supervisory Experience

The melange of motion motivated by the purpose of Ownership, the methods of Management, the acts of hourly rated supervised persons in handling materials and machines are "traffic copped" by Supervision along the aisles

of production and service, but the performance of this function by Supervision on a "next to the janitor" basis maintains an ever widening gulf between Supervision and Management.

Common knowledge, the National Labor-Relations Act and the record show these levels of the Employer-Employee Relationship:

D. As to Fact and Form of Organization.

1. Ownership
2. Management

} Organized in Local, State and National Associations, Chambers, Councils and Clubs.

3. Supervision Generally Unorganized—A Small Percent in Organizations Mixed with, Dominated by or Affiliated with Unions of Supervised Workers or in Company Sponsored Associations.

4. Maintenance and Production } Organized in Trade or Industrial Unions.

In fact and as envisaged by the National Labor Relations Act on the two sides of the table, bargaining as to wages, hours and working conditions, we find levels in American Employment Relationship:

E. As to Self-Interest.

1. Ownership

vs.

2. Management
3. Supervision
4. Maintenance and Production

That the rate and manner of compensation of Management as compared to Supervision and to Maintenance and

Production leaves Management muddle-minded as to where its ultimate economic interest is, does not alter the fundamental relationship. Ownership is the "hirer" and Management, Supervision, Maintenance and Production are its "hired men"—one Employer and three general classes of Employees.

By the fanciful phrase "foreman level of management" counsel for appellant seeks to raise Supervision, if possible, above the level of persons employed, regardless of the fact of employment. But acceptance of the phrase "foreman level of management" obviously would not actually lift Supervision into the realm of Ownership, into the realm of dividends, bonuses and precentages, or out of the realm of monthly, weekly and hourly rates of pay, nor out of that canyon-like "middle" between organized Ownership on the one hand and organized Labor on the other hand.

Chemists, Engineers and technicians of that kind are not here discussed because the record does not include this type of "plant know-how" which, as everybody knows is also "hired."

3. Sub-sections (2) and (3) in Section 2 Read in Pari Materia.

Common knowledge and Section 1 of the National Labor Relations Act establish as an important purpose of Ownership the prevention, corruption or defeat of organization by its Employees in their own interest.

Only a single *aspect* of Ownership is treated in the Act and that is its employment of "hired" men to carry out its purposes.

Those who become the "hired" men of Ownership are treated by the Act in three clearly defined aspects:

F. As to *Aspect* or Function.

1. Hired in Production or Service
2. Hired to Handle Relations with other Employees
3. Persons Bargaining at Arms Length with Ownership as to Their Own Wages, Hours and Working Conditions

The "persons" affected by the Act are first defined, Section 2 (1), so that the Act may next define the *aspects* of their relationship as Employer and Employees that are the subject-matter of the legislation.

The persons to whom Sub-sections (2) and (3) apply are stated in the broadest possible terms by the use of the words "*any* person" in Sub-section (2), and "*any* employee" in Sub-section (3). Thereby Congress showed its intention to disregard the person as the basis of classification and to legislate concerning defined *aspects* of their relationship in employment.

Sub-section (2) applies to the *aspect* or area in which any "hired" person acts in the interest of an Employer. It does not exclude, nor is it inconsistent with, a contemporaneous employment by the same Owner for the performance of other tasks, or in a different *aspect*.

Sub-section (2) relates to that *aspect* of the hired person's employment wherein he contacts other hired persons as to their rights as afterwards defined in the Act. It relates to an *aspect* of the hiring.

Sub-section (2) relates to the Acts of any and all "hired" persons whose work for the hirer brings them into contact with the rights of other persons hired that are defined and secured in the subsequent sections of the Act. It may apply and does apply to "any" and every

employed person from the gatekeeper, the doorkeeper, the janitor, through the maintenance and production workers, Supervision, and Management, and to all but Ownership itself.

Sub-section (3) deals with a different *aspect* of employment. It deals with the Employees of Ownership with respect to their rights as secured by the later sections of the Act and in relationship to their organization to secure for themselves wages, hours and working conditions. This *aspect* of employment is the principle subject of the Act and no doubt it was placed immediately in Section 2 next to Sub-section (2) so that the *aspects* of employment respectively covering and applying to it would not become disjointed or confused.

Sub-sections (2) and (3) apply to different *aspects* of a hiring, or employment, and they may and probably do apply to the *same persons*.

When anybody but the Owner is acting in the interest of Ownership affecting the rights of other "hired" persons as thereinafter is set forth, the Act constitutes that person, in that *aspect*, the agent of Ownership.

When one or more persons approach Ownership or its agents, as defined in Sub-section (2), with respect to *their own* wages, hours and working conditions, or the rights thereinafter secured them by the Act, they are clearly defined as Employees.

It is possible, by reading Sub-sections (2) and (3) *in pari materia*, that within the same hour, or even at the same time, the same person may be an agent of the Employer under Sub-section (2) and an Employee under Sub-section (3) as it is not a matter of time or person, but a matter of the particular *aspect* of hiring that determines whether a "hired" person is an Employer or an Employee.

The agency may be single or double; (1) production or service, and/or (2) dealing with other "hired" persons with respect to their rights or aims as employees, but as to the third *aspect* there is no agency. Here the relationship becomes adversary, Ownership and Supervision being face to face and at arms length.

The Act furnishes no authority for trying to change a "hired" person into an owner or agent of Ownership for any purpose or in any capacity other than the special agency for Ownership so plainly set forth in the Act.

The Owner is treated throughout as a single and uniform economic entity.

The term "Employee" as defined in Section 2 (3) is couched in language as broad as could possibly be used.

It is in the third *aspect* of being "hired" by an Owner that the term "Employee" is used in Section 2 (3). This Section is obviously broad enough in the definition of the word "Employee" to include all of the help or persons "hired" by Ownership or an Employer in any or all three *aspects* in which the Act considers a "hired" person. The rights secured by the Act may be availed of by any person "hired" by Ownership for any purpose whatsoever with respect to organization to secure the wages, hours and working conditions of the persons "hired."

The Employer's claim that Section 2 (2) should be read *in pari materia* with Section 2 (3) is an attempt to give Section 2 (2) such an unreal and exaggerated meaning as to limit or wipe out the plainly intended meaning and operation of Section 2 (3). The construction contended for by Appellant is not an attempt to give the two clauses equal proper effect, but to destroy the one (Section 2 (3)) by an unreal and obviously not intended construction of the other (Section 2 (2)).

A fair reading of the National Labor Relations Act shows that the parties subject to its provisions are classified:

G. According to *aspects* of Employer-Employee Relationship.

1. Employer—Owner or "hired" persons when acting for Ownership as affecting the right of any other Employee to organize
   (a) Management
   (b) Supervision
   (c) Maintenance and Production
2. Employees—"Hired" persons when acting in their own several and collective interests as to *their own* wages, hours and working conditions
   (a) Management
   (b) Supervision
   (c) Maintenance and Production

It is this plain and inevitable sense, meaning and purpose of this Act that has driven the Employers to the filmy vagaries and fantastic propaganda that has characterized their efforts to evade the consequences of a fair reading of the National Labor Relations Act.

V. REASONING OF APPELLANT

That the granting of the rights plainly secured to all employees by the National Labor Relations Act may "materially affect the mass production industry" does not entitle the opponents of Employee-organization to cripple or thwart administration of the Act. The Act was plainly intended by Congress to materially or even drastically change the American Employment Relationship from the paralysis and bloody chaos of unrestrained exploitation and conflict to orderly procedures under governmental supervision. Such change as may thereby be made were specifically declared by Congress to be in the public interest.

That a law involves personnel and the rights of a large group (perhaps 3,500,000) of supervisory Employees is not a reason for reversal in view of the plain intent and purpose of the National Labor Relations Act. If Appellant's counsel means that a minority of Supervisors, for various reasons, are opposed to organization, the right of the majority to collective bargaining through organizations of their own choosing, so clearly granted by this Act, should not be further delayed.

That the Board, partly through changes in its membership, and partly through a change of opinion brought about by a more accurate knowledge of the facts as to Supervision, has first extended the benefits of the Act to foremen, then denied those benefits, and then again granted them, and that it has overlooked the limitations upon its powers in Sec. 9 (b), and when pointed out by foreman's counsel has again regarded those limitations, does not support a demand for reversal here.

On the question whether foremen were entitled to the benefits of the Act and whether the Board could refuse to approve a unit appropriate for the purposes of collective bargaining the Board has been subjected to an avalanche of anti-union propaganda and unrestrained pressure, but it has finally come to the correct conclusions on both issues.

The argument of Appellant's counsel (Br. p. 26) that it is "absurd and unreasonable" for employees highly placed and paid, such as Managers and Superintendents to organize in their own interest, ignores immemorial practice and the fact that the more a man has the more imperative and reasonable it is for him to organize with persons having a community of interests in their common protection, as for instance, Owners, Ministers, Lawyers, Doctors, Engineers, Chemists, Architects, Railway Managers and the like. The more learning and skill a person possesses, the more he has for another to exploit.

The argument that an agent may not be placed in a position of temptation to serve his own interest at the expense of his principal applies, of course, only in business relations. It cannot and does not apply where, as here, the parties are dealing with respect to the services to be rendered by the agent and the extent of his compensation or pay. In the negotiations between the Owner and the Supervisor as to the duties and compensation of the latter, the parties stand and act at arms length and as adversaries.

When it comes to the fidelity of the Supervisor in such contacts as he has with supervised persons he is not dealing with his own association or union. It is as plain as a pikestaff that a Supervisor who is backed by a union of his fellow Supervisors is much more likely to stand up for his Employer's legitimate interests than an unorganized Supervisor standing alone with the certain knowledge that his

Employer will yield more to the shop steward of the supervised workers' union than he will to the indiyidual representation of an unorganized Supervisor. From this viewpoint the organization of Supervisors is distinctly in the interest of the Employer.

From the discussion of the intent of Congress as disclosed by the debates there, including the Case Bill (Br. pp. 30, 31, 32, 34) Appellant's counsel omitted the definitive statement of the venerable Senator Wagner on the Case Bill debate as to what Congress intended when the National Labor Relations Act was enacted, as follows:

> Senator Wagner:
>
> "Mr. President I understand that the question with which we are dealing is now pending in Court. I believe that the subject about which we are asked to legislate is the very subject over which we fought several years ago. The issue then was, shall the workers have the right to organize and bargain collectively? *Foremen are also workers.* What we are now being asked to say to the foremen is, 'No; you may not organize. If your employer does not want you to have a union, you may not organize.' As I have said, we fought over that issue some years ago when the so called Wagner Act was first before the Congress. *Supervisors are not a part of management;* but it is now proposed to say to them, 'You may not be protected under the so called Wagner Act because you are foremen. You are not ordinary workers. You may not have anything to say about your wages. You have no right to bargain collectively.' We fought out that very issue back in 1933, and we thought it was settled. The employer said to the employee, 'No; you may not belong to a union.' We were compelled to enact legislation so as to permit the workers to organize."

Continuing Senator Wagner said:

> "Senators may do as they please, but if they vote for the amendment they will say to many foremen and supervisors, 'No; you have no legal protection. You have no right to bargain collectively. You have no right to carry on collective bargaining with your employer with reference to what your wages, hours or anything else shall be.' Senators, if we do that I say that we are returning to the old days." (Italics ours.)

(Cong. Rec. May 25th, 1946, Vol. 92, p. 5811.)

The foregoing statement of the author of this Act would seem to be as much a part of its legislative history as the quotations of Senator Ellender set forth on pages 31 and 32 in Appellant's Brief, both being argument on an attempt to amend it to expressly forbid certification of foremen's unions.

VI. CONCLUSION

The holding that foremen are "Employees" within the meaning of the National Labor Relations Act, that petitioners are an appropriate unit, and the Order of the 6th Circuit Court of Appeals enforcing the Order of the National Labor Relations Board should be affirmed.

Respectfully submitted,

WALTER M. NELSON,
Attorney for Appellee Association.

Dated: January 7th, 1947.

APPENDIX

NATIONAL LABOR RELATIONS ACT

(49 Stat. 449)

AN ACT

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

Section 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in

the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising our of differences as to wages, hours, or other working conditions, by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State,

Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133[1] approved June 14, 1935.

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[1] So in original.

NATIONAL LABOR RELATIONS BOARD

Sec. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as the chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all powers of the Board, and two members of the Board shall, at at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

Sec. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard

for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individuals for the purpose of conciliation of mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civilservice status. All records, papers, and property of the old Board shall become records, papers and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or em-

ployees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefore approved by the Board or by any individual it designates for that purpose.

Sec. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subseqeuntly participating in a decision of the Board in the same case.

Sec. 6.(a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute finan-

cial or other support to it: *Provided,* That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require, as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

REPRESENTATIVES AND ELECTIONS

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the tran-

script of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in said proceeding and to present testimony. In any

such proceedings the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the un-

fair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining oder, and shall cetify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent of agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The

jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States and upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any peron aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such a court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically

ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101-115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine

witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

Sec. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

Sec. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

Sec. 14. Whenever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec 707 (a), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

Sec. 15. If any provision of this Act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Sec. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

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Supreme Court, U. S.
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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 658

PACKARD MOTOR CAR COMPANY, A MICHIGAN CORPORATION,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

MOTION OF CARNEGIE-ILLINOIS STEEL CORPORATION, COLUMBIA STEEL COMPANY AND TENNESSEE COAL, IRON AND RAILROAD COMPANY FOR LEAVE TO FILE BRIEF AS AMICI CURIAE, AND BRIEF FOR AMICI CURIAE IN SUPPORT OF PETITIONER

NATHAN L. MILLER,
71 Broadway,
New York 6, N. Y.
ROGER M. BLOUGH,
436 Seventh Avenue,
Pittsburgh 30, Pa.
BORDEN BURR,
Brown-Marx Building,
Birmingham 3, Ala.
PAUL R. CONAGHAN,
208 S. La Salle St.,
Chicago 4, Illinois,
Counsel for Amici Curiae.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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The undersigned, as counsel for Carnegie-Illinois Steel Corporation, Columbia Steel Company and Tennessee Coal, Iron and Railroad Company, respectfully move the Court for leave to file the accompanying brief in this case as *amici curiae* in support of the petitioner.

The issues involved in this case relate to the question whether the National Labor Relations Board has the

power to force manufacturing companies to bargain with union representatives of general foremen, foremen, assistant foremen, and other supervisory employees who are members of a unit certified by the Board. This question presents related questions which include, among others, whether general foremen, foremen, assistant foremen and other supervisory employees were intended by Congress to be included in the term "employees" as used in the National Labor Relations Act, and, also, the constitutional limitations upon the asserted powers of the Board in the exercise of its jurisdiction.

The three integrated steel producing companies presenting this motion, by their counsel, are vitally and immediately concerned with the questions which will be decided in this case. Complaints of alleged unfair labor practices involving foremen's unions have been filed with the Board by unions, or by the Board representing the unions, and are now pending against Carnegie-Illinois Steel Corporation and Columbia Steel Company. Petitions for representation of foremen's unions claiming to represent general foremen, foremen, assistant foremen and other supervisory employees have been filed before the Board and hearings have been concluded relating to Tennessee Coal, Iron and Railroad Company. These petitions are now awaiting decisions.

These Board cases present questions of law identical with some of the questions of law which will be decided in the case at bar. These Board cases also present questions which are not now before this Court. The rights of the steel producing companies in these Board cases will be determined in the case at bar as to the issues decided by this Court without an opportunity for hearing to them, unless they are permitted to file their brief and express their views as *amici curiae*.

Consent to file this brief has been received from the necessary parties, in accordance with Rule 27, paragraph 9.

Dated at Chicago, Illinois, this 2nd day of January, 1947.

NATHAN L. MILLER,
71 Broadway,
New York 6, N. Y.,

ROGER M. BLOUGH,
436 Seventh Avenue,
Pittsburgh 30, Pa.,

BORDEN BURR,
Brown-Marx Building,
Birmingham 3, Ala.,

PAUL R. CONAGHAN,
208 S. La Salle St.,
Chicago 4, Illinois,
Counsel for Amici Curiae.

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BRIEF FOR CARNEGIE-ILLINOIS STEEL CORPORATION, COLUMBIA STEEL COMPANY AND TENNESSEE COAL, IRON AND RAILROAD COMPANY AS AMICI CURIAE.

PRELIMINARY STATEMENT.

Carnegie-Illinois Steel Corporation manufactures steel, coke and coal chemicals. It employs approximately 100,000 persons. Its 20 plants are located in Pennsylvania, Ohio, Indiana and Illinois. Gary Sheet and Tin Mill is located at Gary, Indiana. Approximately 7,600 persons are employed there in the manufacture of tin plate and sheet steel.

Foreman's Association of America, Chapter 42, heretofore has filed its petition for certification of representatives involving the Gary Sheet and Tin Mill plant. A decision and direction of election was handed down by the Board on May 8, 1946. An election was held on June 6, 1946. Of the approximately 335 eligible voters, 280 cast valid votes, of which 55 were for Foreman's Association of America, Chapter 42, and 225 were against. The Board on June 21, 1946 entered its order dismissing the petition.

Gary Steel Works of Carnegie-Illinois Steel Corporation also is located at Gary, Indiana. It is a completely integrated steel plant, occupying approximately 1,400 acres and employing approximately 20,000 employees. The Gary Steel Works operates 15 batteries of coke ovens, manufacturing coke and coal chemicals, 12 blast furnaces, 50 open hearth furnaces, primary rolling mills and finishing mills.

On June 30, 1945, Foreman's Association of America, Chapter 44, filed its petition for certification of general foremen, assistant general foremen, turn foremen, assistant foremen and other supervisors at Gary Steel Works (N. L. R. B. Case No. 13-R-3174). This petition was withdrawn without prejudice on November 7, 1945. No petition for representation has been refiled.

On October 11, 1946 a complaint was issued by the Board on unfair labor charges filed by Chapter 44, Foreman's Association of America, against Gary Steel Works in N. L. R. B. Case No. 13-C-2799. Chapter 44 and the Board have completed presentation of testimony in this case. The respondent has not completed presentation of its testimony.

Columbia Steel Company operates open hearth furnaces, rolling mills, a sheet mill, a foundry, a wire and wire-rope mill at Pittsburg, California. There it employs approximately 2,500 persons. Foremen's and Supervisors' Association of Pittsburg, California has been certified by the

Board in N. L. R. B. Case 20-R-1396 pursuant to a decision and direction of election. A complaint against Columbia Steel Company alleging unfair labor practices and refusal to bargain has been issued by the Board in N. L. R. B. Case No. 20-C-1555. The hearing on this complaint has been held. The case is now awaiting Board decision.

The Tennessee Coal, Iron and Railroad Company (hereinafterwards referred to as "T. C. I.") is an integrated steel company manufacturing finished and some semi-finished products for sale. It produces substantially all of its raw materials to go into the manufacture of steel and not for sale to the general public. It employs approximately 28,000 employees.

For operational purposes it is divided into several divisions. The ore mining division employs some 4,600 employees and the rank and file of this division are represented by the International Union of Mine, Mill and Smelter Workers affiliated with the C. I. O.; the coal mining division employs approximately 4,100 employees and the rank and file of these employees are represented by the United Mine Workers of America affiliated with the American Federation of Labor; the rail transportation department employs approximately 1,100 employees, the rank and file of whom are represented by several labor unions, the Machinists Union affiliated with the American Federation of Labor, the United Steel Workers of America, the Brotherhood of Locomotive Enginemen and Firemen, and the United Association of Iron, Steel and Mine Workers; the manufacturing division employs approximately 16,600 employees, the rank and file of the maintenance and production employees in that entire division being represented by the United Steel Workers of America affiliated with the C. I. O.

The manufacturing division is composed of six plants;

namely, the Ensley Works, Fairfield Steel Works, Fairfield Wire Mill, Fairfield Tin Mill, Fairfield Sheet Mill, and the Bessemer Rolling Mill. The front line contact of management with the production and maintenance employees in the manufacturing division is the Turn Foreman or equivalent.

Petitions for representation involving T. C. I. have been filed in N. L. R. B. Case 10-R-2115 by "Fairfield Sheet Mill Supervisors Union" and in N. L. R. B. Case 10-R-2124 by "Tin Mill Supervisors Union."

Petitioners in both cases claim to be labor organizations separate and independent from each other and free of affiliation, association, or domination of any national union or any other labor organization. These two cases are now pending before the Board, awaiting decision.

All of the foregoing cases pending before the Board present questions of law identical with some of those involved in the case at bar. The decision of this Court will materially affect all of the cases pending before the Board.

ARGUMENT

I.

The History, Terms and Purposes of the National Labor Relations Act and the Necessity for Preserving Unity of Management Clearly Indicate That General Foremen, Foremen, Assistant Foremen and Other Supervisors Are Not Employees Within the Meaning of the Act.

A.

The Findings and Policy of Congress in Section 1 of the Act State That Its Provisions Relate to "Wage Rates," "Wage Earners" and "Workers." Such Findings and Congressional Policy Do Not Apply to Foremen, Who Are Part of Management and Act "in the Interest of an Employer, Directly or Indirectly."

The findings of Congress are stated in Section 1 of the Act:

> "The inequality of bargaining power between *employees* who do not possess full freedom of association * * * and employers * * * tends to aggravate recurrent business depressions, by depressing *wage rates* and the purchasing power of *wage earners* in industry and by preventing the stabilization of competitive *wage rates* and working conditions within and between industries." [Emphasis added.]

The policy of Congress is stated in Section 1 of the Act:

> "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining, and by protecting the exercise *by workers* of full freedom of association, self-organization, and designation of representatives of

their own choosing, for the purpose of negotiating the terms and conditions of *their employment* or other mutual aid or protection." [Emphasis added.]

Congress stated in its *findings* and *policy* that it was concerned solely with "wage rates," "wage earners," and "workers." Congress used these words to express their common and accepted meaning. "*Wages* and *hire* are for the more menial, manual or mechanical forms of work, and commonly imply employment for short periods as a day or week; *salary* and *stipend* are for the more mental forms and imply greater permanence of employment and payment at longer intervals: the *wages* of a servant or a laborer; the *salary* of a post-master or a teacher." (Century Dictionary.) "In common use the word *wages* is applied specifically to the payment made for menial labor or other labor of a manual or mechanical kind. * * *" (Century Dictionary.)

A supervisory foreman with authority to hire and discharge employees is not a "workman" or "wage earner" within the meaning of the Bankruptcy Act (11 U. S. C. A., Sec. 104 (b) (5)). Hence foremen were not entitled to priority to claims for *wages* due. *In re Broudarge Brothers Novelty Yarn, Inc.*, 22 F. Supp. 891, (E. D. N. Y., 1938).

The Committee Reports on the National Labor Relations Act before it became a law clearly indicate the intent of Congress not to extend the provisions of the Act to general foremen, foremen, assistant foremen and other supervisors who are members of management. The Senate Report of the Committee on Education and Labor (issued May 1, 1935; Congressional Reports, National Labor Relations Act, S1958, 74th Congress, First Session, Calendar No. 595, Report No. 573) on page 3 stated:

"For these reasons, the committee believes that the present bill, by promoting peace in industry, will con-

fer mutual benefits upon employers, *workers*,[1] and the general public.

"(2) *Economic adjustment.*—The second major objective of the bill is to encourage, by developing the procedure of collective bargaining, that equality of bargaining power which is a prerequisite to equality of opportunity and freedom of contract. The relative weakness of the isolated *wage earner*[1] caught in the complex of modern industrialism has become such a commonplace of our economic literature and political vocabulary that it needs no exposition. * * *"

The same Senate Committee on pages 6 and 7 of its Report stated:

"* * * And to hold that a *worker* who because of an unfair labor practice has been discharged or locked out or gone on strike is no longer an employee, would be to give legal sanction to an illegal act and to deny redress to the individual injured thereby.

"For administrative reasons, the committee deemed it wise not to include under the bill agricultural laborers, persons in domestic service of any family or person in his home, or any individual employed by his parent or spouse. But after deliberation, the committee decided not to exclude employees working for very small employer units. The rights of employees should not be denied because of the size of the plant in which they work. Section 7 (a) imposes no such limitation. And in cases where the organization of *workers* is along craft or industrial lines, very large associations of workers fraught with great public significance may exist, although all the members therein work in very small establishments. * * *"

Other excerpts from the same Senate Committee Report follow:

"* * * Unlike the Federal Trade Commission Act, which deals somewhat analogously with unfair trade practices, this bill is *specific* in its terms. *Neither the*

1. Emphasis added in all quotations from Committee Reports.

National Labor Relations Board nor the courts are given any blanket authority to prohibit whatever labor practices that in their judgment are deemed to be unfair. Secondly, as will be shown directly, the unfair labor practices listed in this bill are supported by a wealth of precedent in prior Federal law.

* * * * * * *

"In conjunction with section 7, the first unfair labor practice enumerated in section 8 makes it illegal for an employer—

> to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

"This familiar statement calls to mind the language of section 7 (a) of the National Industrial Recovery Act (48 Stat. 198, U. S. C., title 15, sec. 707 (a)), which provides that—

> Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of *employers* of labor, *or their agents*, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

"Similarly, section 2 of the Railway Labor Act of 1934 (48 Stat. 1185) provides:

> The purposes of the act are * * * (3) to provide for the complete independence of carriers and of employees in the matter of self-organization * * *. Employees shall have the right to organize and bargain collectively through representatives of their own choosing * * *. *No carrier, its officers or agents*, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organizations of their choice * * *." (pp. 8, 9)

"The so-called 'company-union' features of the bill are designed to prevent interference by employers with organizations of their *workers* that serve or might

serve as collective bargaining agencies. * * *" (p. 10)

"Of course, nothing in the bill prevents an employer from discharging a man for incompetence; from advancing him for special aptitude; or from demoting him for failure to perform. * * *" (p. 11)

"* * * *Workers* have found it impossible to approach their employers in a friendly spirit if they remained divided among themselves. * * *" (p. 13)

The Report of the House Committee on Labor (issued June 10, 1935, 74th Congress, First Session, Report No. 1147) on page 3 stated:

"* * * But the bill is merely an amplification and further clarification of the principles enacted into law by the Railway Labor Act and by section 7 (a) of the National Industrial Recovery Act, with the addition of enforcement machinery of familiar pattern. * * *

"Upon the passage of the National Industrial Recovery Act it was hailed by the President as giving to *workers* 'a new charter of rights long sought and hitherto denied.' * * *"

Additional excerpts from the House Committee Report follow:

"*Section 1* states the *underlying factual basis* for the regulation provided in the bill. * * *

"The loss in *wages*, trade, and commerce from such strife has been enormous, as competent investigation demonstrates. * * *" (p. 8)

"* * * The absence of effective enforcement and election machinery, and the diffusion of responsibility and conflicting interpretations in regard to section (7) (a), have forced *workers* to resort to industrial warfare to gain the rights which by law were justly theirs. Throughout the period of the operation of the National Industrial Recovery Act, there existed or were impending serious conflicts burdening or threatening to burden the free flow of commerce in some of our largest industries, such as coal and copper mining, textile manufacturing, steel, automobiles, rubber, and

shipping. These conflicts have had their counterpart in other industries as well, on perhaps a smaller scale, but equally bitter and fraught with dangerous possibilities.

"The bill seeks, to borrow a phrase of the United States Supreme Court, 'to make the appropriate collective action (of employees) an instrument of peace rather than of strife' (*Texas & New Orleans R. R. Co. v. Brotherhood* (281 U. S. 548)).

"The committee amendment to this section reformulates the declaration of policy in order to emphasize the intent of the bill to promote industrial peace, and therefore to bring it more clearly outside of the ruling in the *Schechter* case. * * *" (p. 9)

"In section 2 are listed various definitions of terms. These definitions are for the most part self-explanatory. * * *

"This statement is a sufficient answer to those who, with questionable disinterestedness, proclaim that rugged individualism is the great boon of the American workman; or that there is something 'un-American' in a movement by *workers* to pool their economic strength in a type of labor organization most effective in approximating the economic power of their *employers*, namely, in so-called 'outside unions,' thereby establishing that 'equality of position between the parties in which liberty of contract begins.' While the bill does not require organization along such lines, and indeed makes no distinction between such organizations and others limited by the free choice of the *workers* to the boundaries of a particular plant or *employer*, it is imperative that *employees* be permitted so to organize, and that unfair labor practices taking in *workers* and labor organizations beyond the scope of a single plant be regarded as within the purview of the bill." (pp. 9, 10)

"The committee amendment to subsection 6 narrows the definition of interstate commerce by not making it extend to transportation or communication that is merely 'related to' interstate commerce. This change has been made in view of the doubts that the *Schechter*

case casts upon the validity of regulating practices that are merely 'related to' or 'indirectly' interstate commerce.

"The new definition inserted by the committee amendment to subsection 7 also helps to confine the bill to the proper sphere under the *Schechter* decision by removing from its purview practices which merely 'affect' interstate commerce. Under this amendment the bill is confined to practices 'burdening or obstructing' interstate commerce. These words have received repeated recognition in court decisions as fit bases for Federal jurisdiction." (p. 10)

"* * * There cannot be two or more basic agreements applicable to *workers* in a given unit; this is virtually conceded on all sides. If the employer should fail to give equally advantageous terms to nonmembers of the labor organization negotiating the agreement, there would immediately result a marked increase in membership of that labor organization. On the other hand, if better terms were given to nonmembers, this would give rise to bitterness and strife, and a wholly unworkable arrangement whereby men performing comparable duties were paid according to different scales of wages and hours. Clearly then, there must be one basic scale, and it must apply to all.

"It would be undesirable if this basic scale should result from negotiation between the employer and unorganized individuals or a minority group, for the agreement probably would not command the assent of the majority and hence would not have the stability which is one of the chief advantages of collective bargaining. * * *" (p. 20)

"* * * *Employer*-promoted unions are most prevalent in the larger plants and industries, where the bargaining power of the individual *worker* is very weak, and, curiously enough, where the managements have hitherto been opposed to organization of their *workers*. * * *" (p. 17)

"The form and nature of the Board's order will of course be subject to court review, along with the other determinations and actions of the Board in the case,

both as to the facts and *the law*, in the manner provided in subsection (e) or (f)." (p. 24)

"* * * The Board is to be solely a quasi-judicial body with *clearly defined* and *limited powers*. *Its policies are marked out precisely by the law.* * * *" (p. 26)

Notwithstanding these clear expressions of Congressional intent in the Committee Reports, the majority opinion of the Board (R. III, p. 1794) stated:

"* * * In stating the purpose of the statute in Section 1 and in defining the term 'employee' in Section 2, Congress used broad language and there is nothing in that language or in the *legislative history* of the Act which in our opinion would justify our construing it in the narrow and restrictive manner which the Company is urging. * * *" [Emphasis added.]

However, the minority opinion of the Board (R. III. p. 1823, footnote 4) states:

"There is some attempt in the majority opinion to claim that the result reached conforms to the intent of Congress. In view of the fact that supervisors were never mentioned either in committee or on the floor at the time of the passage of the Wagner Act, I have never regarded such arguments as particularly fruitful, especially as the definition of 'employee,' unlike that contained in the Railway Labor Act, does not specifically include 'subordinate officials.' The real truth of the matter seems to be that Congress scarcely adverted to the question until the repercussions of the *Union Collieries* decision invited the attention of the House. Then a bill to amend the Act so as to exclude supervisors from its provisions, gathered considerable legislative momentum in the House Military Affairs Committee. Before the bill was reported out, however, the *Maryland Drydock* decision was issued."

This Court in *N.L.R.B.* v. *Hearst Publications*, 322 U. S. 111, at page 124 stated:

"Whether, given the intended national uniformity, the term 'employee' includes such *workers* [Emphasis added] as these newsboys must be answered primarily from the history, terms and purposes of the legislation. The word 'is not treated by Congress as a word of art having a definite meaning * * *.' Rather 'it takes color from its surroundings * * * [in] the statute where it appears,' *United States* v. *American Trucking Associations, Inc.*, 310 U. S. 534, 545, 60 S. Ct. 1059, 1065, 84 L. Ed. 1345, and derives meaning from the context of that statute, which 'must be read in the light of the mischief to be corrected and the end to be attained.' * * *"

The House Committee Report stated (p. 8) that Section 1 of the Act provides "the underlying factual basis" for the regulation provided in the bill. The findings of fact of the Board regarding the foremen of the Petitioner cannot be substituted as "the underlying factual basis" for forcing the Petitioner to make a labor contract if the will of Congress is to be obeyed. *Yakus* v. *United States*, 321 U. S. 414, 424.

Conferring benefits on "workers" and the "isolated wage earner" was declared by the Senate Committee Report (p. 3) to be "the second major objective" of the Act. Congress and the various Committees considering the Act's provisions well knew the difference in meaning and in economic effect between "workers" or "wage earners" and foremen or supervisors. Notwithstanding, there is no provision in the "clearly defined" and "limited powers" given to the Board by the Act relating to foremen or other supervisors. To read such a provision into the Act is merely going contrary to the legislative intent by supplying a provision which Congress deliberately omitted.

The House Committee Report further stated (p. 9) that Section 2 of the Act, describing "employer" and "employee," contains "definitions which are for the most part

self-explanatory." This clearly indicates an intention of Congress to limit "employee" as used in the Act to "worker" and "wage earner" referred to in Section 1 of the Act and to limit the Board from extending the term to other concepts, as it has done in extending it to Petitioner's foremen.

The "serious conflicts" among *"workers"* existing *"throughout the period of the operation of the National Industrial Recovery Act"* in "some of our largest industries," including "steel" and "automobiles," was the basis for reformulating the declaration of policy in Section 1 of the Act *"in order to emphasize the intent of the bill,"* according to the House Committee Report (p. 9)

These "serious conflicts" during the period stated did *not* exist in either the "automobile" or "steel" industry with respect to general foremen, foremen and other supervisory employees. There has never been any such "conflict" in the "automobile" industry until about the time of the case at bar. There is no history of collective bargaining in the steel industry by representatives of foremen and other supervisory employees, and no attempted collective bargaining since the passage of the Act. To force collective bargaining upon employers in these industries now would ignore the "intent" of the Act which Congress sought to "emphasize"—an intent that the Act be applied to "workers" and "wage earners" in industry because of the "serious conflicts" during the period of the operation of the NIRA and no "intent" that the Act be applied to foremen and other supervisors. The argument that some unions have a history of bargaining collectively for some foremen is no basis for finding the Board was given *power by Congress* to *force* collective bargaining upon *all* foremen in *all* industry.

It is important to note that the House Committee Report (p. 26) considered that the powers given to the Board

were "clearly defined" and "limited powers." The Board's theory is contrary. The Board considers the question to be whether it "could properly find" that Petitioner's foremen are employees within the meaning of the Act rather than whether *the power to compel* the execution of a labor agreement with union representatives of Petitioner's foremen is a power which was "clearly defined" and one of the "limited powers" given to it by Congress. Thus, the Board proceeds to "interpret" the Act and issue its "findings of fact," *conferring upon itself powers never granted to it by Congress.*

Even the Circuit Court of Appeals misstates the problem, *N. L. R. B.* v. *Packard Motor Car Co.*, 157 F. 2d 80, 83, by stating that the "controlling questions" are whether the supervisory employees are "entitled" to or "excluded" from "the privileges" of the Act, and, if they are entitled to "the privileges" of the Act, whether the unit created by the Board is appropriate. Stating the problem in this manner begs the question. It ignores the fundamental question whether the *power* to exercise jurisdiction was ever given by Congress to the Board in the first place. As the dissenting opinion rightly observed (p. 87), we are not concerned with "the making of a policy" or what the policy of Congress ought to be or should have been. The only references to Congressional Reports to ascertain the intent of Congress are in the dissenting opinion. (157 F. 2d 80, 87.) The majority opinion (p. 84) merely stated, "The legislative history does not assist in the solution of the problem."

It is important to note, also, that the House Committee Report stated (p. 26) that the Board's "policies are marked out precisely by the law." The *policies* given to the Board by Congress are set forth in Section 1 of the Act. The *limitations* of the *policy* to "workers" and "wage earners"

and the frequent reference to them in both the Senate and House Committee Reports, together with other provisions of those Reports hereinbefore quoted, clearly indicate an intention of Congress to *limit* the powers of the Board to "workers" and "wage earners" and to exclude the Board from the exercise of any such powers with reference to foremen and supervisors.

B.

The Board's Order, if Enforced, Will Destroy Management Unity and Will Take Away From Management the Authority It Must Retain in Exercising Its Duties and Responsibilities.

Management includes all levels of managerial and supervisory personnel and is not confined to top-ranking executive and administrative officials.

Both the Board and the Circuit Court of Appeals admitted that foremen are members of management unity. The Circuit Court stated (157 F. 2d, 80, 81) "The foremen are the front line of management." Similar statements and quotations are repeated in the Court's opinion.

A bona fide foreman is engaged exclusively in the performance of management functions. He directs the working forces of a unit and has direct responsibility for the facilities and operations of that unit. He performs no work of the same nature as that of the employees supervised, except for training purposes and in emergencies. He is the front line of management and upon him rests responsibility for direct execution of management functions in his particular area. In meeting his responsibility, the foreman exercises independent judgment and decision daily in the arrangement of working forces, operation and maintenance of manufacturing facilities, safety, personnel, and labor relations. He initiates orders for such items of cost as materials, tools, equipment, services, fuel and labor. Because

of his close daily association and experience, the foreman possesses a more detailed knowledge of his particular facilities, processes and personnel than other members of the management. Such knowledge is an integral part of the management function and is called upon constantly not only by the foreman himself, but also by other members of management. No policy, plan or procedure can be translated into action except through each foreman, who constitutes the only "management" existing in his sphere of responsibility.

No individuals or areas of management in a modern business can, as a practical matter, exercise independent action without the consultation, collaboration and cooperation so essential to effective execution of management functions and responsibilities as a whole. The management objective can be attained only through unrestricted collaborative effort and teamwork of all those exclusively concerned with its inherent functions and responsibilities, whether they be line or staff, and regardless of their position in the management structure.

It is common knowledge that effective conduct of the business is dependent upon complete collaboration of all members of management in the discharge of these functions and responsibilities, and that management must perform as a team with a single dominant purpose. The management team must have the authority necessary for the performance of its complete responsibility in the complex and ramified operation of the plant as a unit; otherwise it does not perform effectively. The management unity cannot be divided without destroying that coordination of team effort, timing, scheduling and flow of production so essential to the successful conduct of the business. The unionization of any part of management, with its inherent creation of dual obligations, destroys the team and the team work with all that it connotes.

It is idle to suppose that organized foremen can be "uncontrolled" agents in dealing with the "rank and file" or in performing duties as a part of plant management. Organized foremen in union plants have been—and, it is reasonable to assume, always will be—influenced by the actions and policies of the rank and file union representatives. The public press accounts of the strikes in 1946 furnish ample proof of organized foremen placing union ideology above their duties as a part of management. Under policies of the Foreman's Association of America, foremen were,—and probably always will be—"controlled" by the union.

The American system of industrial production cannot exist where direction of the working forces is half management and half union. Destruction of essential unity of management and the efficiency and economy of operations is bound to result.

Authority cannot be divided and the management responsibility fulfilled. The authority of plant management to manage and its responsibility to the owners and—in any careful analysis—to the public, should not be transferred to a foremen's union. Creation of monopolistic power in a union as to its members, the employer, and the owners is the direct antithesis of unity in management and the American system of industrial production.

It may be suggested that the foreman's work is of such a character that there is little difference between his work and that of a top paid production worker. Quite the contrary is true. There is present in the foreman's work the fundamental of management or supervision. Without the execution of this responsibility the production machine falters. Production is not a spontaneous thing. It needs direction at every turn. This direction is supplied by foremen and other members of management. The level at which direction and supervision occur in any business en-

terprise is not a criterion of their necessity. It is rather only an indication of the type or scope of supervision given by that particular rank of management. Each level of supervision is a necessary step in the management of the business; otherwise that level would not exist.

The "facts involved in the economic relationship" require that the present American system of industrial production be retained, at least until Congress constitutionally devises a different system. The American system cannot be retained if a foremen's union is forced upon employers by the Board and is permitted to inject itself into management and to dictate, without any responsibility, its own ideas about plant operations.

There is nothing in the Act, or its legislative history, which indicates an intent by Congress to change the industrial system of production, to divide management, and to make one segment of management recognize and bargain with another. The Board should not be permitted to conduct an experiment so ill conceived and so productive of disruption and disunity.

By the very nature of his work the foreman occupies a position of trust and confidence. He has been selected because of individual capabilities and special qualifications; and the terms and conditions of his employment are fixed accordingly. The foreman is and must be capable of looking out for his own best interests; if not, he does not meet the qualifications for the management function. In his position as a part of management, the intervention of a bargaining agent is unnecessary.

II.

The Hearst Publications Case Is No Authority For the Enforcement of the Board's Order.

The case of *N. L. R. B.* v. *Hearst Publications*, 322 U. S. 111, was relied upon by the Board in its decision (R. III, p. 1795) and also by the Circuit Court of Appeals in its opinion (157 F. 2d 80, 85). The *Hearst* case affirmed the decision of the Board that newsboys are employees and are entitled to collective bargaining rights granted by the Act. It is not authority for the decision of the Board in the case at bar for the reasons heretofore stated in this brief and as will be shown by further analysis.

The Board in its Decision and Direction of Election (R. III, 1791-18) seeks justification for its self-created power by the dictum: "Where all the conditions of the relation require protection, protection ought to be given." *N. L. R. B.* v. *Hearst Publications*, 322 U. S. 111, 130.

What is there for the Board to protect? What are *all* of the conditions of the relation which require protection?

The employer receives no protection by the Board's edicts. In fact, protection is taken away from the employer. Management unity is destroyed. Divided loyalty of foremen will create more "serious conflicts" than those now existing.

The public receives no protection. It receives the greatest *injury*. The public, that is, the consumers, lose the benefit of production under unified management, a major source of American superiority in the manufacture and distribution of every day necessities.

The production workers' union is protected by the Board and the courts, as any employer and the public well know.

The foremen themselves do not require the protection of the Board. The fact that they have been able to attain such position of trust, generally by promotion from the ranks, is proof of that. The entire success of the enterprise depends upon the company itself protecting its managers.

The major question presented is not "one of specific application of a broad statutory term"—the term "employer" or "employee." The question presented, first, is one of *a claimed power which is challenged.* The question presented, secondly, is where to draw the line of employer in the application of an Act passed by Congress for the benefit of "laborers" and "workers." (157 F. 2d 80, 87.)

Where the challenged power of the Board goes to the scope of the Board's jurisdiction, then that challenge should be considered by this Court as any other such question arising in the first instance in a *judicial* proceeding or as a question of the jurisdiction of this Court arising in an intended judicial review by this Court of a lower court's adjudication.

The existence of an asserted finding of fact *per se*, a "reasonable construction," a "warrant in the record," a "reasonable basis in law" or a "rational conclusion" is not enough. *This Court's function is not so limited.* When the question is one of power to exercise jurisdiction or the constitutionality of the power exercised, this Court must go on and examine the sources of the power and adjudicate *whether Congress has ever given it to the Board.* When the "history, terms and purposes of the legislation" do not indicate a grant of the power asserted, the power is lacking. It is then the plain duty of this Court, imposed by the Constitution, to strike down the expropriation of such power.

"• • • The order of the Board is subject to review by the designated court, and only when sustained by

> the court may the order be enforced. Upon that review all questions of the jurisdiction of the Board and the regularity of its proceedings, all questions of constitutional right of statutory authority, are open to examination by the court. We construe the procedural provisions as affording adequate opportunity to secure judicial protection against arbitrary action in accordance with the well-settled rules applicable to administrative agencies set up by Congress to aid in the enforcement of valid legislation. * * *" *National Labor Relations Board* v. *Jones & Laughlin*, 301 U. S. 1.

There *is* something in the Act to indicate a result contrary to the decisions of the Board and the Circuit Court of Appeals in this case. That something is clearly set forth in the Senate and House Committee Reports, the findings and policy of Congress as stated in Section 1 of the Act and the reference to "employer" and "employee" in Section 2 (2), (3) of the Act. Congress expressed an intention to draw the line between employee and employer. Congress expressly intended that the provisions of the Act shall apply to the former but not to the latter. The question of law is: Where shall the line be drawn?

The line of the Board's constitutional power should be drawn where the Board heretofore has drawn it for the purpose of determining whether a union of production workers is company (foremen) dominated or whether unfair labor practices of foremen with respect to a union of production workers have made liable the employer to the punitive edicts of the Board. (*Association of Machinists* v. *N. L. R. B.*, 311 U. S. 72, 80, 81; *Heinz Co.* v. *N. L. R. B.*, 311 U. S. 514, 520.) The drawing of that line by the Board uniformly has been where management ends and when production begins. That line at Packard, in the steel producing industry and in industry generally is at the position of turn foreman or its equivalent. All positions on that line and above constitute management—the "employer."

With respect to these positions, the Board has no power from Congress to exercise its jurisdiction. Any attempted exercise of such jurisdiction is a usurpation of a power which was never given to the Board by Congress. The Board's position is not logically sound. It is not consistent with economic facts or the *"limited" powers conferred upon it by Congress.*

There is no basic reason for Board inconsistency in the drawing of this line. The impelling reasons which caused the Board to draw the line at the foreman level in complaint cases should apply to the Board in representation cases and in the case at bar. For the Board to apply a meandering line—depending on the exigencies of the case and the particular union or individuals involved—and a devious method of reasoning, as it has in the case at bar, results in decisions which are not only logically inconsistent but also which are arbitrary and discriminatory against employers.

This is the first fallacy in the Board's case!

The drawing of the line of necessity is by the Board in the first instance. Does that make any Board's decision a finding of fact? And the same as any other finding of fact? And conclusive? It does not. This is the second fallacy of the Board's case!

May the Board confer (legislative) power upon itself to exercise its jurisdiction regarding foremen? The Board cannot constitutionally create such power. Only Congress can create such power. Congress has not done so. It has expressly called upon the Board to draw the line and to exercise its jurisdiction only with respect to persons below the line. The claim of the Board in the case at bar that it can create its own legislative power and thereby determine the limits of its jurisdiction ignores the constitutional limits upon legislative power. Legislative power is non-

delegable. This is the third fallacy of the Board's reasoning!

Having exercised its asserted jurisdiction—which initially the Board said (*Matter of Maryland Drydock Co.*, 49 N. L. R. B. 733) it lacked power to exercise—is this Court precluded from making a judicial examination of the claimed power? That this Court is not so precluded is the fourth fallacy of the Board's reasoning!

The mere assertion of a legislative or judicial power by the Board does not make such assertion a finding of fact immune from challenge by an employer or the scrutiny of this Court. The so-called finding of fact with respect to Packard foremen is a finding of fact which relates to the *power of the Board.* If the Board has power to exercise its jurisdiction merely by finding as a fact that it has such power, if such finding is conclusive, and if the Board thereby can exclude judicial examination of the question, judicial review, as in the case at bar, is merely a ritual and not an adjudication, which it should be, especially, as the case at bar, when the power is challenged.

The principles of organization applicable to the Petitioner have been detailed by the Board and by the Circuit Court of Appeals. The same principles are applicable to the steel producing industry.

Unity of management is essential in the varied operations of an automobile plant, a steel plant, or any industrial plant. Foremen have concomitant duties and responsibilities with other members of management. They direct operations and hold positions of trust. In the steel industry, as in many industries, foremen keep the time of the production and maintenance employees under their supervision and report "time worked" to the accounting department for the computation of pay checks. In the current new litigation under the Wage and Hour Act, foremen will

be important witnesses pertaining to time worked—and time not worked.

> "And Moses chose able men out of all Israel, and made them heads over the people, rulers of thousands, rulers of hundreds, rulers of fifties, and rulers of tens. And they judged the people at all seasons: *the hard causes they brought unto Moses, but every small matter they judged themselves.*"
>
> —Exodus XVIII: 25, 26.

"Organization is as old as human society itself."[2]

III.

The Constitutional Limitations on the Board's Power Should Prevent Enforcement of the Board's Order.

If "the Board's determination that specified persons are 'employees' under this Act is to be accepted if it has 'warrant in the record' and a reasonable basis in law", as stated in the *Hearst* case (p. 131), the intent of Congress will be disregarded. Congress intended that the Board have "clearly defined and limited powers".

Furthermore, the questioned jurisdiction of the Board and the constitutional limits upon the Board's power should not be decided by the Board itself. There should be a judicial determination. *Crowell* v. *Benson*, 285 U. S. 22.

Congress lacks constitutional power to delegate to the Board authority to legislate that employers are compelled to bargain with themselves. As found by the Circuit Court of Appeals in this case, "foremen are the front line of management" and, hence, are employers under the Act. Furthermore, Congress lacks constitutional power to delegate to the Board the authority to make laws.

Schechter v. *United States*, 295 U. S. 500.
Carter v. *Carter Coal Company*, 298 U. S. 238, 310.
Yakus v. *United States*, 321 U. S. 414, 424.

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2. "The Principles of Organization" by James D. Mooney and Alan C. Reiley. Harper & Brothers.

Congress must express a standard for the Board to follow in order that the Board's orders may comply with the will of Congress. There is no such standard in the Act. Since Congress has not stated a standard for the guidance of the Board with respect to foremen and other supervisors, the Board may not proceed to establish its own legislative standard. This the constitution prohibits.

The present chairman of the Board testified regarding the case at bar on February 28, 1946 before the Subcommittee of the Committee on Education and Labor of the United States Senate as follows:

> "* * * I speak for both my colleagues in saying that all three of us regard this matter as one involving a broad question of national policy on which we, as a Board, having already expressed our views judicially, and having the matter pending before us in other regards, ought not to advise the Congress which particular course to follow." (Report of Proceedings, Vol. 7, p. 553.)

There is no constitutional authority for the Board by a judicial determination to settle broad questions of national policy. The determination of "a broad question of national policy" should be made by Congress and not by the Board.

Conclusion.

The enforcement of the Board's order in this case will impair, and may even revolutionize the American system of industrial production. There is nothing in the Act or its legislative history expressing such an intention by Congress. The Board has not been authorized by Congress to change the economy of the United States and may not constitutionally do so. The enforcement of the Board's order should be denied by this Court.

NATHAN L. MILLER,
71 Broadway,
New York 6, N. Y.,

ROGER M. BLOUGH,
436 Seventh Avenue,
Pittsburgh 30, Pa.,

BORDEN BURR,
Brown-Marx Building,
Birmingham 3, Ala.,

PAUL R. CONAGHAN,
208 S. La Salle St.,
Chicago 4, Illinois,
Counsel for Amici Curiae.

FILE COPY

No. 658

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946

PACKARD MOTOR CAR COMPANY,
Petitioner,
vs.
NATIONAL LABOR RELATIONS BOARD,
Respondent.

MOTION OF CHRYSLER CORPORATION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

and

BRIEF AS AMICUS CURIAE

NICHOLAS KELLEY
B. R. ISERMAN
Attorneys for CHRYSLER CORPORATION,
Amicus Curiae
79 Broadway, New York City

KATHERINE, PERRY, KELLEY & DYKE,
Of Counsel

No. 658

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Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

MOTION

NOW COMES Chrysler Corporation, a corporation organized and existing under and by virtue of the laws of the State of Delaware, and respectfully moves this Honorable Court for leave, through its attorneys, to file the accompanying brief in this case as *amicus curiae*.

We annex hereto copies of a letter received from the attorneys for the petitioner and of a telegram from the General Counsel of the respondent in this case consenting to the filing of said brief.

Dated: New York, January 4, 1947.

Respectfully submitted,

NICHOLAS KELLEY,
T. R. ISERMAN,
Attorneys for CHRYSLER CORPORATION,
Amicus Curiae,
70 Broadway,
New York 4, N. Y.

RATHBONE, PERRY, KELLEY & DRYE,
of Counsel.

WESTERN UNION TELEGRAM

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REURTEL PACKARD BOARD CONSENTS TO FILING
OF BRIEF AMICUS

GERHARD P VAN ARKEL—
GEN COUNS NLRB.

BODMAN, LONGLEY, BOGLE, MIDDLETON & ARMSTRONG
1400 Buhl Building
Detroit 26, Michigan

January 3, 1947

Mr. T. R. Iserman,
Messrs. Rathbone, Perry, Kelley & Drye,
Central Hanover Bank and Trust Company Building,
70 Broadway,
New York 4, New York.

In re: Packard Motor Car Company, Petitioner v. *National Labor Relations Board, Respondent—Supreme Court of the United States, October Term, 1946—No. 658*

Dear Mr. Iserman:

This is to advise you that as attorney for the petitioner, Packard Motor Car Company, in the above entitled case, I not only have no objection to your filing of a brief amici with the Supreme Court, but would appreciate your doing so.

Yours truly,

LOUIS F. DAHLING

Louis F. Dahling

LFD:LD

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No. 658

IN THE

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OCTOBER TERM, 1946

PACKARD MOTOR CAR COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

BRIEF ON BEHALF OF CHRYSLER CORPORATION, *AMICUS CURIAE*

Summary of Argument

We purpose in this Brief to show that the order of the National Labor Relations Board directing Packard to bargain collectively with the Foremen's Association of America as the representative of three ranks of foremen and a group of special assignment men is incorrect, in the light of (1) the purpose of the National Labor Relations Act to regulate commerce (the only constitutional purpose Congress could have had in passing that Act), and (2) of the general law as Congress has fortified the general law by providing in the Administrative Procedure Act [Secs. 10(a) and 10(e)] for correcting "legal wrong".

The facts in the record, particularly those relating (1) to the duties of foremen and (2) to the effect of foremen's unionizing, even in a union that professes to be "independent" of the union of the men they supervise, show that certifying an exclusive bargaining representative for foremen is against the constitutional purpose of the Act, and is contrary to the rule of the law of agency against divided loyalty. This rule of law the Act, by its own terms, seems to preserve. In any event this Court ought to protect it. And the Administrative Procedure Act, by its clear terms and intent, requires that the rule of law shall prevail over presumed "expertness" of the National Labor Relations Board.

FIRST POINT

Neither experience nor evidence in this case shows that unionizing foremen is appropriate to further the constitutional purpose of the National Labor Relations Act, namely, to increase output and to promote the flow of commerce. Experience, the evidence and common sense all are to the contrary.

1. The Order of the Board Is Valid only if it Furthers the Constitutional Purpose to Increase the Flow of Commerce.

Congress has no authority to deal with unionizing and collective bargaining as ends in themselves, but only as a means of exercising its constitutional power to regulate commerce. *Kidd* v. *Pearson*, 128 U. S. 1, 20, 21, (1888); *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 407, 408 (1922); *Oliver Iron Co.* v. *Lord*, 262 U. S. 172, 178 (1923); *United Leather Workers* v. *Herbert & Meisel Trunk Co.*, 265 U. S. 457, 465 (1924); *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295, 310 (1925); *A. L. A. Schechter Poultry Corp. et al* v. *United States*, 295 U. S. 495 (1935); *Carter* v. *Carter Coal Co.*, 298 U. S. 238 (1936).

As Congress stated explicitly in Section 1 of the Act itself, it was to increase output of goods that move in the stream of commerce, and thus to increase its flow, that Congress passed the National Labor Relations Act, and it was upon this purpose, and upon no other, that this Court upheld the constitutionality of the Act. *Labor Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 38-40 (1937); *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 604 (1939); *Consolidated Edison Company of New York* v. *National Labor Relations Board*, 305 U. S. 197, 222, 237 (1938).

There were doubts at the time that unionizing and collective bargaining were an appropriate means to increase output and increase the flow of commerce. See: Sumner H. Slichter, *Union Policies and Industrial Management*, The Brookings Institution, Washington, D. C., pp. 9-10, 50,

95, 164-197 (1941); U. S. Department of Justice, *Anti-Trust Cases in the Construction Industry*, Senate Committee Print No. 12, 79th Congress, 2nd Session; Williamson and Harris, *Trends in Collective Bargaining*; Twentieth Century Fund, Inc., New York, pp. 104-112 (1945); T. R. Iserman, *Industrial Peace and the Wagner Act*, McGraw-Hill Book Company, Inc., New York, pp. 8-9 (1947). Not leaving these doubts to be resolved by evidence, Congress, by legislative fiat, in the preamble of the National Labor Relations Act, established what it wished the Court to regard as the "facts", saying (Section 1):

> "Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions, and by restoring equality of bargainging power between employers and employees."

Since the National Labor Relations Act was the first Act of its kind in any country, one may ask whose "experience" Congress was referring to in saying that compelling employers against their will to deal with unions and compelling workers on the vote of a bare majority to permit unions to handle their dealings with their employers would promote the flow of commerce. If Congress was basing its statement upon experience with voluntary collective bargaining, it had only to turn to the literature to find that many unions not only put artificial restrictions upon output but also engage in practices that impede it. It had only to turn to Government records to find that industrial strife and strikes had been more than ten times as great among employees who bargained collectively as among those who did not. Bureau of Labor Statistics, U. S. Department of Labor, Bulletin No. 651, *Strikes in the United States*, 1880-1936.

However valid were the assertions of Congress as applied to the "workers," and "wage earners" who were the "employees" to which it referred in the preamble of the Act, certainly there was not then, and there is not now, any "experience" that supports the thesis that compulsory unionizing of foremen and compulsory collective bargaining over the terms on which they take their positions, work and advance in the great productive industries of America, are in the interest of increasing output or promotes the flow of commerce. Experience and common sense show the contrary, and they, as well as the terms of the Act, clearly call for vacating the order of the Board.

2. Declarations by Congress of What It Purported to Have Found from Experience, and upon the Basis of Which This Court Upheld the Constitutionality of the Act, Could Not Relate to Foremen, and Congress Did Not Intend Them to Relate to Foremen.

Certainly, Congress was not speaking of foremen in the mass producing industries of America when it spoke of what it thought "experience" had proved. When Congress passed the Act foremen were not organized in any such industry. On the contrary, then and in later years, most unions in these industries excluded foremen from membership and regarded the foremen as their worst enemies. The only industries in which some supervisors were organized were a few backward ones—shipping, which existed only by virtue of subsidies and other Government help; railroads, which in large part had been in bankruptcy or facing it for many years; construction, where collusive agreements between employers and unions cost the public so dearly and cause so much concern to the Anti-Trust Division of the Department of Justice, and job shops in the printing trades, where collective bargaining takes the form of unions laying down "laws" for employers to follow. Obviously, experience in these industries could not have led Congress to expect a great outpouring of goods to move in the stream of commerce as a result of unionizing foremen.

It was not until June, 1942, nearly seven years after Congress passed the National Labor Relations Act, that the Board, for the first time, set up a collective bargaining unit consisting wholly of supervisors. *Matter of Union Collieries Coal Co.*, 41 N. L. R. B. 961 (1942). The Military Affairs Committee of the House of Representatives took up H. R. 2239, the purpose of which was to preclude the Board from unionizing foremen under the Act. While Congress was considering the Bill, the Board reversed itself in the *Maryland Drydock* case [49 N. L. R. B. 733 (1943)], saying that it would not establish collective bargaining units of supervisors except in those few trades where supervisors had organized in the past. After the Board, in the *Packard* case [61 N. L. R. B. 4 (1945)], again reversed itself, holding that it would establish such units, both houses of Congress passed, by large majorities, the Case Bill (H. R. 4908), Section 12 of which made plain that Congress never had intended the Board to unionize foremen.

Thus it is clear that there was not any experience of compulsory collective bargaining by foremen that Congress could have had in mind when it purported to say in the preamble of the Act what experience had proved. Congress itself by passing the Case Bill has stated clearly that it did not intend its assertions in the preamble of the National Labor Relations Act of what experience had proved to mean that compulsory collective bargaining by foremen would promote the flow of commerce. Hence, the basis upon which the Court, in the *Jones & Laughlin* case (301 U. S. 1), upheld the constitutionality of the Act does not sustain the decision of the Board in this case.

3. Experience, the Evidence in This Case and Common Sense Show that Unionizing Foremen and Bargaining Collectively over the Terms and Conditions of their Employment Will Tend to Defeat the Constitutional Purpose of the Act, not to Promote It.

The absence of any assertions of fact by Congress that can be held applicable to foremen leaves no basis on which to rest any conclusion that unionizing foremen will further

a constitutional purpose, unless this Court goes much farther than it ever has gone before and holds that compelling unwilling employers and unwilling employees, with the willing, to bargain collectively to be a constitutional purpose, regardless of the effect upon output and upon commerce. Even if there were facts in the record in this case that showed that unionizing Packard's foremen would increase output in Packard's plants, there would not be ground for upholding the order of the Board in the absence of any declaration by Congress that it intended, when it passed the Act, that the Act was to apply to people concerning unionizing of whom Congress had had no experience in the light of which it could lay down a policy.

But there are no such facts in this case. The facts show the opposite.

It is true that, in deciding the case, the Board referred to a series of strikes by members of the Foreman's Association of America in 1944, an "experience" that came on nearly ten years after Congress passed the Act and after the Board, in the *Union Collieries* case [41 N. L. R. B. 961 (1942)] and the *Godchaux Sugars* case [44 N. L. R. B. 874 (1942)] had held out to unions hope of help from the Government in organizing supervisors. The Board seemed to assume that these strikes were for recognition, although in long hearings before a Panel of the National War Labor Board and in its literature the Foreman's Association of America tried to show that they grew out of "grievances" of foremen. (The Panel found that the "grievances" were trivial, non-existent or without merit).

However, even assuming that the strikes were for recognition, it certainly does not go without saying that the Board's trying to forestall strikes of foremen's unions for recognition by certifying the unions, would have the effect of increasing output. There are two things that such a view does not take into account:

First, if history repeats itself, the Board's granting demands for recognition under the Wagner Act will increase strikes as well for recognition as for other concessions; and,

Second, supervisors, unionized, will be less capable than before of doing their principal duty, to secure output from their men, and output will suffer.

More strikes, not less, will result from unionizing foremen. The theory of the Wagner Act seems to be that if unions can, without striking, secure from the Labor Board certification as exclusive representatives of employees, then unions will not strike for recognition. Experience has shown this theory to be incorrect. In each year since the Wagner Act was passed, there have been more strikes arising out of matters that the Labor Board can handle under its procedures than in any of the five years before Congress provided in the Act peaceful means of settling such disputes. Bureau of Labor Statistics, *Strikes in the United States*, 1880-1936, p. 61; Same, Serial No. R 789, *Strikes in 1937*; Same, Serial No. R 939, *Strikes in 1938*; Same, Serial No. R 1114, *Strikes in 1939*; Same, Serial No. R 1282, *Strikes in 1940*; Same, Bulletin No. 711, *Strikes in 1941 and Strikes Affecting Defense Production*, pp. 7, 18; Same, Monthly Labor Review, Vol. 62, No. 5, p. 720; T. R. Iserman, op. cit., pp. 14-15.

Nor, if one is to measure the effectiveness of unionizing foremen under the Wagner Act as an aid to commerce in terms of strikes, can one overlook the record of strikes over matters other than those that the Board can deal with under the Act. In the ten years before Congress passed the Wagner Act, there were, on the average, 1,040 strikes a year reported to the Bureau of Labor Statistics. In each of the ten years while the Act was in effect, there were, on the average, 3,270 a year. In 1945, there were 4,750.

If the Court sustains the order of the Board in the present case, one can confidently foresee that strikes by foremen, both for recognition and to enforce other demands, will grow more, not less. Output, commerce will suffer.

Mr. Reilly, in dissenting in this case, pointed out that the record shows that granting compulsory collective bargaining rights to unions under the Wagner Act does not stop strikes for recognition, and went on to say, consistently

with past experience, that even if the Board, by certifying unions of foremen stopped strikes by them for recognition, it would lay the ground for strikes to enforce a much greater variety of union demands.

If strikes are to be taken as a standard for measuring the effectiveness of certifying exclusive bargaining agents under the Wagner Act as an aid to commerce, we should not ignore another set of figures of the Bureau of Labor Statistics, which shows that in each year since Congress passed the Act, workers represented by unions, although less than half the total, have caused from 92.8 to 98.2 per cent. of all the strikes.

Unionizing foremen will interfere with their doing their work upon which output depends, and will impair commerce, not increase its flow. Ten thousand citizens of Detroit, left to themselves in Packard's plants, could not, without supervision, make automobiles. In Packard's plants, as in all others, output demands that there be someone in the vicinity of the work to tell each of the workers what pieces to make, how and at what machines and with what tools to make them, and how many of them to make; what colors to paint them, how and in what sequence to put them together; to see that they keep at their work and do it well, that they do not take too much time off the job, do not talk too much, loaf, engage in horseplay or in unsafe practices that may injure themselves or their fellows, that they do not waste materials or misuse equipment. Someone must coordinate their efforts, direct them, control them, correct them when they are wrong, dispose of their complaints and grievances or provide information that enables someone else to dispose of them, and keep order. All these things and many others foremen do, and they all are in the interest of output.

Unionizing foremen under the Wagner Act will interfere with foremen's performing these duties and output will suffer. Anyone with first hand knowledge of labor unions or who fairly has read the writing on how they operate, can see readily that this is true when the foremen

are in a union in which their more numerous subordinates predominate and through which the subordinates can control the foremen. It follows as clearly that the results are the same whether the foremen's union is affiliated with the workers' union or professes to be "independent" of the workers' union.

Mr. Madden, former chairman of the Board, tells how in its early days the Board bided its time, culling cases concerning workers, selecting first the strongest to present to this Court, and then going on from the early victories to extend and enlarge its authority. Silverberg and others, *The Wagner Act: After Ten Years*, Bureau of National Affairs, Inc., Washington, 1945, pp. 39-41. Something of the same process is going on now. The Board has brought on first, as a case of original impression, this case, in which the petitioner claims to be an "independent" union, not formally affiliated with the union that under the Wagner Act is the exclusive bargaining agent of the workers whom the foremen supervise. When the trial of this case took place the philosophy on the subject was only developing. There had not come fully to light the aims of the F. A. A. that conflict with the duties of foremen to promote output, nor had there come out fully its relations with unions of workers. These relations undermine the ability of foremen to do their duties. The Board has not presented here as complete a record as that in *Matter of L. A. Young Spring & Wire Co.*, 65 N. L. R. B. No. 59 (1946), or the record in *Matter of Chrysler Corporation*, 69 N. L. R. B. No. 182 (1946). Nevertheless, there is enough, and more than enough in this record to show that output is bound to suffer when foremen unionize under the Wagner Act, and that this is as true when the foremen's union claims to be "independent" as when it does not.

Four things bring this about:

1. In the first place, one must keep in mind the power over foremen that vests in a union when the Board certifies it as exclusive bargaining agent of the foremen under the

Act. If anyone had by law the exclusive right to act for another in buying groceries, hiring a doctor, obtaining living quarters or contracting for other essentials of life, he as "agent" would have great power over his "principal". A union with the exclusive right under the law to determine a member's earnings, fix his hours of work and carry on all his other dealings with his employer that affect his work and his livelihood has this power. It has a power even greater. For if certified under the Act it has power over everybody in the appropriate unit, whether members or not, to the exclusion of all others *and even of themselves*, they must, under the law, permit the exclusive bargaining agent to deal for them with their employer, whether or not they wish it to do so. *J. I. Case Co.* v. *National Labor Relations Board*, 321 U. S. 332 (1944); *Matter of Hughes Tool Company*, 56 N. L. R. B. 981 (1944), 147 Fed. (2d) 69 (C. C. A. 5, 1945); *Matter of J. I. Case Co.*, 71 N. L. R. B. No. 182 (1946). The control over their constituents that the Wagner Act gives to unions adds to the control that they exercise under their constitutions, by-laws and oaths, through social pressure, moral pressure, ostracism and abuse and through threats of violence and even violence itself.

This control enables unions to compel their constituents to conform to the union's policies. Some of these policies impair the ability of unionized foremen to perform their duties in directing and controlling their men in the interest of output. That the F. A. A. has such policies, the demands it has made upon Packard and other companies, the speeches of its president and what it has itself published all show.

The F. A. A. believes in striking, and, as the record shows, it is quick to strike and it strikes over small things. The foreman's duty is to prevent strikes and to urge employees, instead of striking, to follow the peaceful procedures their contracts provide. The foreman cannot do this effectively when he is subject to control by a union

that strikes as quickly as the union of the rank and file, and with no more reason.

The F. A. A., like most other unions, insists that companies follow seniority in placing and advancing men, and that its members shuffle along in seniority's aging line, regardless of their merit, ability and productivity. It is the foreman's duty to select men and to advance them, or to recommend them for advancement upon the basis of merit, ability and potentiality for future progress. Their doing this duty is as important to the future of the business as to present output. But they cannot do this duty effectively when their own union insists that the company follow seniority in advancing them and when they absorb from their own union a philosophy that conflicts with their duty.

One union policy calls upon each member to do no more than his fellows do. This tends to reduce the efficiency of the whole group to that of the less productive members of the group. Another favors standardized pay, each man receiving what his fellows receive. This leaves unusual productivity unrewarded and stifles initiative and ambition. Unions frequently oppose new methods and machines that increase productivity; often they restrict output; insist that two or more people do what one could do, or require pay for work that no one does. See: Williamson and Harris, *Trends in Collective Bargaining*, Twentieth Century Fund, Inc., 1945, pp. 104-112; Sumner H. Slichter, *Union Policies and Industrial Management*, The Brookings Institution, 1941, pp. 9-10, 50, 95, 164-197; T. R. Iserman, op. cit., pp. 8-9; *J. I. Case Co.* v. *National Labor Relations Board*, 321 U. S. 332, 338, 339 (1944).

Whether their union is affiliated with the union of their men or is "independent" of it, the effect of such policies as these upon the ability of the foreman to do his work is the same.

Obviously, when foremen absorb from their labor union policies and principles that conflict with their duties in the interest of output, and when they are subject to the influence and control under the Wagner Act of a union that has these

policies and principles, the union's alleged "independence" does not prevent the foremen from being half-hearted, or worse, in performing their duties, and output is bound to suffer.

(2) Foremen, unionized, are subject to influence and control not only by their own union when its aims and policies conflict with the foremen's duties, but also by the union of the men they are hired to supervise and whom they are supposed to keep at work and working well.

Unionizing foremen amalgamates them in the labor movement with the men they supervise. This alone makes it hard for them to keep order in their departments and to secure a full day of good work from their men. In its original decision in this case (61 N. L. R. B. 4), the Board conceded that when it unionizes foremen under the Act there results a "common bond of sympathy" between the foremen's union and that of the workers, and that, however strongly the foremen's union professes to be independent of the workers' union, it is not truly independent.

But it is not a mere "bond of sympathy" between the foremen's union and the workers' union that works against foremen doing their work whole-heartedly when wishes of the workers and of their union conflict with the duties of foremen. "Solidarity of labor" is not an empty phrase, but a strong and active force, and foremen are subject to it when they unionize or when the Board subjects them to union control by certifying a union as their exclusive bargaining agent under the Wagner Act. One has only to read extracts from Mr. Keys's speeches that are in the record here and the issues of "The Supervisor," official publication of the F. A. A., to see how completely the F. A. A. identifies itself and its members with workers in the labor movement, and how it invariably supports the workers, right or wrong, in their disputes with employers. Characteristically, after the disastrous wartime coal strikes in which the United Mine Workers repeatedly defied the Government, "The Supervisor" in May, 1944, highly praised the "sterling qualities" of Mr. John L. Lewis, concluding:

> "If any man in the history of unionism ever deserved the title, Labor Leader, in the true meaning of the words, it is John L. Lewis."

(3) But even stronger forces are at work to undermine the faithfulness with which unionized foremen attend to their duties when wishes of their men and of the union of their men conflict with those duties. The whole bargaining strength of the foremen's union depends upon the good will of the workers and of their union. The "right to strike" of foremen and their union is worthless unless the union of the rank and file forbids its members to take the foremen's jobs. In the present case, the F. A. A. admitted this, and it admitted that it was able to call strikes of foremen in the spring of 1944 only because it had an agreement with the workers' union that qualified workers would not be permitted to do the work of striking foremen. It admitted that, during a strike of foremen of Republic Steel Company, workers refused to cross the foremen's picket line, pursuant to agreement between the F. A. A. and the workers' union.

A great deal of even stronger evidence of the rank and file unions' control over the F. A. A. since then has come to light and is not denied. The dissenting opinion of Mr. Reilly in *Matter of Chrysler Corporation*, 69 N. L. R. B. No. 182 (1946), shows that the Company offered in evidence hundreds of exhibits, many of them in the form of letters exchanged by the F. A. A. and workers' unions, showing the close relation between the F. A. A. and unions of workers under foremen that the F. A. A. had organized, and showing that the workers' unions can and do cause the F. A. A. to interfere with its members' performing their duties faithfully when wishes of the workers' unions conflict with those duties. The Trial Examiner of the Board excluded all of this evidence upon the ground that it was irrelevant. The Board sustained the rulings of the Examiner. It seemed to think that no amount of evidence concerning the adverse effect upon output of the foremen's unionizing would deter it from certifying the foremen's union. Even before this, the Board had said in *Matter of*

Jones & Laughlin Steel Corporation, 66 N. L. R. B. No. 51 (1946), that no concern about

"what is best for industry or even for employees"

would stop its unionizing foremen under the Act. Unable, in cases on foremen, to meet the test of constitutionality on the basis of which this Court upheld the Act as it applies to workers, the Board now says that it will unionize foremen regardless of the effect of its doing so upon output and notwithstanding its effect upon commerce.

Evidence to which Mr. Reilly referred in his dissent in the *Chrysler* case showed that unionizing foremen in the supposedly independent F. A. A. enables unions of workers, through the F. A. A. to influence and control foremen for the benefit of members of the rank and file unions and in derogation of the foremen's duties and of the purpose of the Act to increase output. One exchange of letters between the F. A. A. and a C. I. O. union showed that the F. A. A. had to call off its strike at B. F. Goodrich Rubber Company when the rank and file, represented by the C. I. O. union, tired of the strike and threatened to go through the F. A. A.'s picket lines and to take the foremen's jobs. About the same thing happened during a strike of members of the F. A. A. at Murray Corporation of America. The Board's records show, and the President of the F. A. A. testified that time and again the F. A. A. has had to withdraw petitions for certification as exclusive bargaining agent for foremen in steel mills whom the C. I. O. steel workers' union wished to organize. If the rank and file can tell members of the F. A. A. when they may strike and when they may not, and if it can tell the F. A. A. what plants it may organize and what ones it may not, then it surely can tell foremen also what duties to perform and what ones to shirk.

Evidence to which Mr. Reilly refers in the *Chrysler* case, but which the Board excluded, shows that rank and file unions are doing this, even now, and that the F. A. A. is assuring rank and file unions that, once unionized, foremen will grant rank and file grievances more freely and enforce shop rules less strictly.

Further evidence of this is in the official publication of the F. A. A. There one finds, for example, that the F. A. A. threatened to strike at Ford's, where it is the exclusive bargaining agent for foremen, because the Company asked the foremen to perform duties distasteful to the rank and file, such as disciplining rank and file workers for loafing in wash rooms, for leaving their work early and for ringing each other's time cards. "The Supervisor", Vol. 4, No. 19, p. 8, August, 1946.

On January 6, 1946, the F. A. A. adopted a "policy" fully committing itself to support strikes of rank and file workers, and to refuse to permit its members to enter struck plants in the absence of the striking union's agreeing to their entering the plants. "The Supervisor", Vol. 4, No. 12, pp. 1, 7-8, January, 1946. This "policy" directs representatives of the F. A. A., when rank and file workers strike, to confer with representatives of the rank and file and provides that foremen shall enter the plant and work only upon terms and conditions that are mutually agreeable to the F. A. A. and to the striking union. The "policy", in conclusion, says:

> "Membership in the Foreman's Association provides a duty and obligation on each member to conduct himself at all times in accordance with the principles and policies of the Association."

Thus, the policies and principles of the Association, and its agreements with rank and file unions, supersede the foremen's duties.

The evidence cited by Mr. Reilly in the *Chrysler* case shows that, besides being dependent upon the rank and file for success in its collective bargaining efforts, the F. A. A. is greatly obliged to unions of rank and file employees for their help in organizing foremen. It shows, also, how and why the F. A. A. attempts to conceal its relations with rank and file unions. Mr. Reilly says:

> "A fairly typical situation is set out in a request of April 25, 1944, from the financial secretary of Local 887, UAW-CIO. His letter states in part:

'We are also attempting to organize North American Aviation 100% in all departments and inasmuch as it is impossible for foremen to hold membership in our local union, we would like them to organize.'

'If it is possible to secure 500 copies of the April issue of your publication, free of charge, we would be glad to make distribution of same to all foremen at North American Aviation.''

"In reply, the president of the Foreman's Association states:

'Your offer to distribute our publication to foremen is gratefully received and fully appreciated, but we are faced with the constant allegation on the part of employers at our hearings before the various Governmental Boards that we are an affiliate of the UAW-CIO. We, of course, deny such allegation and the officers of the locals and the international UAW-CIO deny them also.

'Therefore, if ways and means can be found to see that the foreman receive this material other than being distributed by members of the UAW-CIO themselves, it would probably eliminate further argument and further allegations on the part of the employer.'

"In the letter quoted in part in the preceding paragraph, the Foreman's Association president suggested that the UAW local furnish a list of supervisors to whom Foreman's Association literature could be sent direct. On May 13, 1944, the local replied that it would be impossible to secure such a list but stated:

'However, we have close to 200 stewards in the plant, for both day and night shifts, therefore, if you would send us about that many papers, we are certain of a good distribution of them right on the foremen's desks. We shall also be glad to handle any other material you may care to send us.

'P. S. Material can be left on the foremen's desks without anyone knowing who left it there.'"

Mr. Reilly continued:

> "These are not the only exhibits indicating the close relationship between the Foreman's Association and the CIO. In a letter of December 8, 1944, from the Foreman's Association president to Walter Reuther, the vice president of the UAW, there is the following:
>
> > 'Mr. Gosser [UAW-CIO regional director at Toledo] and I discussed our problem of organizing the foremen in that area who are carrying associate member cards in the UAW-CIO, and he is very familiar with the problems of foremen, and impressed me immensely with his views on this subject. I am looking forward to other pleasant discussions with Mr. Gosser, and feel sure that our problem will be settled to our satisfaction through his understanding.'"

The Company had offered in evidence correspondence of this kind between the F. A. A. and 22 locals of a single union, the UAW-CIO, which represents the rank and file in Packard's plants.

Almost invariably, in accepting the help of rank and file unions, the F. A. A. assured the unions of the F. A. A.'s good will and cooperation, urged them to let the F. A. A. know when it could "return the favor" or spoke of "benefits" *to the rank and file* that would result from unionizing foremen—benefits at the cost of the companies, whose interests it is the duty of foremen to protect.

Mr. Walter P. Reuther, now president of the U.A.W.-C.I.O., in Case No. 111-4665-D before the National War Labor Board on August 22, 1944, declared:

> "We haven't had any strikes in General Motors among the foremen, and that's primarily because we have been too busy with some of our own problems, and we have never encouraged the foremen to organize in General Motors. I say that if our union wanted the foremen in General Motors organized, they would have been organized the same as Chrysler and Ford and the other ones."

All this evidence shows relations between the F. A. A. and unions of their men that, unless all human experience is ignored, must persuade the Court that, while professing to be "independent," the F. A. A. is, in fact, under great obligation to unions of the rank and file, and particularly to the U.A.W.-C.I.O., and that it is dependent upon those unions.

(4) The fourth factor that makes it hard for unionized foremen to perform their duties faithfully arises from the habit that most unions have, and that the F. A. A. has, of abusing and vilifying the companies for whom the foremen work and whose interests are in the foremen's hands. Since its beginning, over the radio and in its magazine, the F. A. A. has sought to teach foremen to hate their jobs and their companies, endlessly repeating slanders, notwithstanding that the Panel of the National War Labor Board found them false. Foremen who are subject to the influence of a bargaining agent that indulges in this sort of propaganda, who pay dues to it and who, under the law, must let it handle all their dealings with the company and obey its orders, cannot be expected to use proper diligence in carrying out their duties to the company.

We submit that the strikes that seem to go hand in hand with collective bargaining under the Wagner Act, the policies that foremen absorb from their union, the state of mind that results from the union's slanders, the influence of their men and of the union of their men to which foremen subject themselves when they organize, all tend to defeat the constitutional aim of the Wagner Act, and call upon this Court, in the interest of output, upon which depend our strength in war, and our standard of living always, to set aside the order of the Board in this case.

SECOND POINT.

By the Administrative Procedure Act, Congress has called upon this Court to correct a legal wrong that the Board committed in subjecting the agents through whom Packard deals with its employees to influences that conflict with their duties as such agents.

No rule of law is stronger, better settled or of greater credit to Anglo-American jurisprudence than that which forbids an agent, in his own interest against his principal, to incur obligations that may tempt him into disloyalty or to enter into relations that create a risk, a danger or a possibility of his being influenced to do less than his best for his principal. *Pepper* v. *Litton*, 308 U. S. 295 (1939); *United States* v. *Carter*, 217 U. S. 286 (1910); *Robertson* v. *Chapman*, 152 U. S. 673 (1894); *Michoud et al.* v. *Girod et al.*, 45 U. S. 503, 555 (1846); *Wadsworth* v. *Adams*, 138 U. S. 380 (1891); *Pratt* v. *Shell Petroleum Co.*, 100 Fed. (2d) 833 (C. C. A. 10, 1938), cert. den. in 306 U. S. 659 (1939); *Trice* v. *Comstock*, 121 Fed. 620 (C. C. A. 8, 1903); *Meinhard* v. *Salmon*, 249 N. Y. 458 (1928); *Stephens* v. *Gall*, 179 Fed. 938 (1910).

The rule operates in advance to prevent disloyalty. It does not make the principal wait until injury has resulted from an agent's having assumed an improper position. It forbids the agent's getting into such a position.

Unionizing foremen is dead against the rule. It divides the foreman's loyalty twice: once between his company and his own union, which has aims and policies that conflict with his duties to the company, and again between his company and the union of the rank and file, which through his union can influence him to neglect his duties. The Act, itself, by words precisely appropriate for the purpose, seems intended to preserve the rule. In Section 2(2), it says that the term "employer" includes "any person acting

in the interest of an employer," as foremen surely do in directing and controlling the men under them.

The Board has admitted that unionizing foremen, even when their union claims to be independent, divides the loyalty of foremen in a way that contravenes the rule on fidelity, but the facts show even greater dividing of loyalty than the Board admits.

In its first decision in this case, the Board conceded that "in an absolute sense," the F. A. A.

> "is not independent of the C. I. O."

In the Board's next decision in the *Packard* case, the Chairman of the Board stated that unionizing foremen into the F. A. A. gives rise to

> "possible dual allegiance"

and that problems of divided loyalty will "inevitably" arise. He said that unionizing foremen into the F. A. A. will result in

> "occasional conflict of interest."

He spoke of the "validity" of the Company's fear that unionizing the foremen into the F. A. A. would divide their loyalty.

These are the very things that the rule on fidelity guards against, and that rule precludes subjecting Packard's foremen to the control that the F. A. A. would have over them as their exclusive bargaining agent.

Even before Congress passed the Administrative Procedure Act, this Court and others held that the Board could not effectuate what it considers the policies of the National Labor Relations Act so single-mindedly as to defeat other objects of law and of national policy, as by condoning mutiny [*Southern Steamship Company* v. *National Labor Relations Board*, 316 U. S. 31 (1942)], by encouraging idleness or by discouraging output and employment [*Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177 (1941)], or by infringing the right of free speech [*National Labor Relations Board* v. *Virginia Electric & Power*

Co., 314 U. S. 469 (1941); *National Labor Relations Board v. American Tube Bending Co.*, 134 Fed. (2d) 993 (C. C. A. 2, 1943), cert. den. in 320 U. S. 768 (1943)].

It is clearly wrong for the Board, in derogation of the rule on fidelity, to force loyal foremen into disloyalty by subjecting them to control by a union whose aims and policies conflict with duties that foremen undertake to perform, and whose relations with the union of the men whom the foremen supervise jeopardize the fidelity with which foremen do their duties. It is clearly wrong for the Board to compel employers to keep as their agents foremen who subject themselves to influences that undermine their loyalty.

It is just such wrongs as this, we believe, that Congress intended the Courts to correct when it provided for judicial review of actions of administrative agencies at the request of anyone suffering "legal wrong" as a result of such action. Public Law No. 404, 79th Congress, c. 324, § 10. Surely an action that does violence to the fundamental rule of law against divided loyalty comes squarely within the meaning of this statute and is an abuse of discretion that, under the Administrative Procedure Act [§ 10], the Court ought to correct.

Senator McCarran, in discussing the Administrative Procedure Act, points out that Congress intended by it to authorize the Courts to pass upon every type of question of law, and, upon such questions, not to defer to assumed "expertness" of members of administrative agencies. Hon. Pat McCarran, "*Improving Administrative Justice*", 32 American Bar Association Journal, 827, 831. We have here a question of law, and surely this Court is far more competent to pass upon it than members of the Board, even were they assumed to be "expert" in the limited field of labor relations.

In his discussion of the Administrative Procedure Act, Senator McCarran takes pains to emphasize that one of the things Congress hoped to accomplish was to

> "cut down the 'cult of discretion' so far as federal law is concerned,"

to make judicial review not merely "available" but "plenary in every proper sense of the word" and to make law superior to "expertness" when the two conflict. Senator McCarran continues:

> "* * * Heretofore, with some notable exceptions, the trend of Government has been for legislatures to shed their responsibilities for the making of law. There has been a much too ready acceptance of the idea that the real work of governance must be left to the 'experts.' The Courts, too, seem to have become imbued with the idea that the judicial duty and function is theirs to surrender. In fact, however, it may be doubted that either the Congress, the Courts, the experts or the public gain by such unrestrained methods. Such a trend will ultimately leave Congress and the Courts with little vital work to perform. * * *
>
> "* * * By abdication, legislatures and Courts avoid many problems, rather than solve them. If we would proceed on the premise that we are stating law, we would in part at least narrow the area of doubt and 'discretion.'"

It seems to us that the present case is one that clearly calls upon the Court to exercise its judicial powers to correct a decision that is a great wrong and a legal wrong.

Even did the question not concern the general law of agency, the Board's decisions on foremen, in which members of the Board have divided, in which it has reversed itself again and again upon the propriety of unionizing foremen at all and upon the ranks that it will include in a single unit when it unionizes some, and in which it has gone from one ground to another to support what it does, do not reflect expertness that makes their decisions necessarily or even presumably correct. On the contrary, the decisions reflect uncertainty and confusion. We respectfully submit that the Court ought to end the uncertainty and confusion, and to forestall still greater perplexities and dilemmas that would result from following the Board's views, by holding that foremen are not "employees" under the Act, and by holding also that a unit of foremen does not "effectuate the policies of the Act." Although recently the Board has tried to claim that it is without power to dismiss petitions because alleged units are not appropriate, Section 9(c) of

the Act is permissive, and the Board many times has dismissed petitions because the units alleged were not appropriate to effectuate the policies of the Act. See: *Matter of Boeing Aircraft Company*, 45 N. L. R. B. 630 (1942); *Matter of Stanley Company of America, et al.*, 45 N. L. R. B. 625 (1942); *Matter of Maryland Drydock Company*, 49 N. L. R. B. 733 (1943).

The Board, admitting danger of disloyalty when it unionizes foremen, says that the Company, through its "normal disciplinary procedures" can punish foremen whose union leads them into disloyalty. This stands the rule of fidelity on its head. The rule operates in advance to prevent disloyalty by forbidding relations that may lead an agent into disloyalty. Furthermore, the Board does not say how the company is to discover and correct disloyalty in lower ranks of supervision when their superiors are in the same union and bound by the same principles, policies and obligations, and when the only supervisors not included in the bargaining unit may be far, and in some of the Board's cases miles, from where acts of disloyalty occur.

The Board argues further that foremen's unionizing to bargain collectively concerning their own terms and conditions of employment need not "necessarily" affect their faithfulness to the Company. It is not merely when obligations of agents and relations between them and those toward whom they act for their principal will "necessarily" result in breach of trust that the obligations and relations are unlawful. It is when such obligations and relations create the "risk" or "danger" of disloyalty that the rule operates. *Michoud et al.* v. *Girod et al.*, supra. The Board's argument overlooks the fact, explicit and implicit in every record before it, that the policies and principles of the F. A. A. itself, make it an improper organization to exercise over foremen the power of an exclusive bargaining representative. It overlooks the further fact that there must and do exist between the F. A. A. and unions of the rank and file relations that heighten and emphasize the impropriety of its acting as such a bargaining agent. The Board's argument certainly has no validity as applied to its putting three ranks of supervisors into one unit and certifying one union as their exclusive bargaining representative.

THIRD POINT

Particularly detrimental to output, and particularly obnoxious to the rule against divided loyalty, is that part of the decision in this case that includes general foremen and foremen in the same bargaining unit with their subordinates, and subjects them to control by a union in which the subordinates predominate.

General foremen direct and control the foremen under them; foremen, the assistant foremen under them. How subjecting all three ranks to control by one union, in which those of lower rank predominate, will reduce the ability of these in the higher ranks to perform duties that conflict with wishes of their subordinates, or with "policies" of the union that the subordinates determine, is obvious. That such an arrangement is inconsistent with the rule on fidelity and is a "legal wrong", is equally obvious.

In most of its cases on rank and file employees, the Board has held it wrong to include supervisors in the same bargaining units with workers, and, before it decided the *Packard* case, the Board had held, unanimously, that it was wrong to include higher ranking supervisors in one unit with their subordinate supervisors, and to certify one union as the exclusive bargaining agent of both groups. See: *Matter of Stanley Company of America et al.*, 45 N. L. R. B. 625 (1942); *Matter of Boeing Aircraft Company*, 45 N. L. R. B. 630 (1942); *Matter of General Motors Corporation*, 51 N. L. R. B. 457 (1943). The Board saw what is obvious, that if the more numerous subordinates were in one unit and in one union with their superiors, there would be danger, on the one hand, that the subordinates could, through the union, interfere with the proper performance by the superiors of their duties, and danger, on the other hand, that the superiors would use their authority over those under them to influence the latter in organizing and bargaining.

But in the *Packard* case, the Board went against all it had said and done before. It put foremen in one unit with assistant foremen, and general foremen in the same unit with their lower-ranking subordinates, and certified one union as the exclusive bargaining agent for all of them.

In some of its later cases, the Board, upon substantially the same facts as appear in the *Packard* case, at least gave the highest ranking supervisors a chance to escape control by their subordinates, directing for the highest ranking men separate elections in which they voted against the F. A. A. representing them. See: *Matter of Kelsey-Hayes Wheel Co.*, 66 N. L. R. B. No. 76 (1946); *Matter of Midland Steel Products Co.*, 65 N. L. R. B. No. 177 (1946); *Matter of Hudson Motor Car Company*, 67 N. L. R. B. No. 52 (1946).

The *Packard* decision obviously is incorrect in this respect, if in no other.

CONCLUSION

The order of the Board ought to be set aside, or at the very least, modified to exclude from the bargaining unit foremen and general foremen.

Respectfully submitted,

NICHOLAS KELLEY,
T. R. ISERMAN,
Attorneys for Chrysler Corporation, amicus curiae,
70 Broadway,
New York 4, N. Y.

RATHBONE, PERRY, KELLEY & DRYE,
of Counsel.

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No. 658.

Supreme Court of the United States

OCTOBER TERM, 1946.

PACKARD MOTOR CAR COMPANY,
Petitioner.

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

MOTION OF FOREMEN'S LEAGUE FOR EDUCATION AND ASSOCIATION AND NATIONAL ASSOCIATION OF FOREMEN FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE, AND BRIEF AS AMICI CURIAE

HARRY P. JEFFREY,
IDDINGS, JEFFREY, WEISMAN & ROGERS,
Harries Bldg., Dayton 2, Ohio,
Attorneys for Foremen's League for Education and Association and National Association of Foremen.

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Supreme Court of the United States

OCTOBER TERM, 1946.

No. 658.

PACKARD MOTOR CAR COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

MOTION.

Foremen's League for Education and Association and National Association of Foremen, corporations not for profit, organized and existing under and by virtue of the laws of the state of Ohio, respectfully move this Honorable Court for leave, through its attorneys, Iddings, Jeffrey, Weisman & Rogers, to file the accompanying brief in this case as amici curiae.

Respectfully submitted,

IDDINGS, JEFFREY, WEISMAN & ROGERS,

By: HARRY P. JEFFREY,

BRIEF.

STATEMENT OF QUESTION INVOLVED.

Could the United States Circuit Court of Appeals properly find that the four classes of petitioner's foremen are "employes" within the meaning of Public Law 198, known as the National Labor Relations Act?

STATEMENT OF FACTS RELATING TO PARTIES FILING WITHIN BRIEF.

The National Association of Foremen is the oldest organization of its kind in the country, with probably the most widely distributed membership both industrially and geographically. It was founded at Dayton, Ohio in 1924 and is incorporated under the laws of Ohio as a corporation not for profit.

The purpose of the National Association of Foremen is "to increase the quality of foremanship by education and to raise the standards and promote the appreciation of foremanship."

Article II, Section 3c, of its constitution, provides as follows:

> "No individual member of the association or organization affiliate of the association may retain such allegiance, and no affiliation shall be granted to any individual or organization which in any manner participates in a labor controversy as a collective bargaining agent."

This position is grounded upon more than twenty years of experience by foremen associated together to promote their own interests. Today, it has more than

23,000 members organized into local clubs in some 135 cities and 33 states throughout the country. Its membership is limited to foremen and other supervisory and technical employes in industry.

The Foremen's League for Education and Association likewise is a non-profit Ohio corporation, organized in 1945. Its purpose is to foster and encourage the formation and development of foremen and supervisory employes' organizations which adhere to the principle of advancement for their members through education and association as a part of management rather than through collective bargaining. Membership is limited to individuals on an annual dues paying basis.

PRELIMINARY STATEMENT.

We address this brief to the single issue as to whether the foremen employed by the petitioner are "employes" within the meaning of the National Labor Relations Act and constitute an appropriate unit for collective bargaining purposes under the terms of the Act. We refrain from a detailed discussion of the facts of the case as these are fully covered by the briefs of the parties. We likewise refrain from a discussion of other issues involved, for the reason that, if the court decides this paramount issue in the negative, a discussion of further questions is unnecessary.

In the various decisions rendered by the National Labor Relations Board on this question, the entire gamut of opinion has been run. In the succession of cases, the board has reversed itself twice and the reasons upon

which the decisions are grounded are equally conflicting. The decision by the United States Circuit Court of Appeals in the instant case affirms the action of the board where the foremen are members of an "independent union", but, by way of obiter, indicates that a different decision would have been reached had the union involved been affiliated with a production workers' union. This opinion is in conflict with a later decision of the board rendered in Matter of Jones and Laughlin Steel Corporation, 66 N.L.R.B., 51.

In 1941, some six years after the effective date of the Act, the board first held a union of foremen to be an appropriate unit for collective bargaining purposes.

Matter of Union Collieries Coal Company, 41 N.L.R.B., 961;
Matter of Godchaux Sugars, Inc., 44 N.L.R.B., 874.

In 1943, the erstwhile minority became a majority, and the board determined that foremen were not "employes" within the meaning of the Act.

Matter of The Maryland Dry Dock Company, 49 N.L.R.B., 733;
Matter of Boeing Aircraft Company, 51 N.L.R.B., 67;
Matter of The Murray Corporation of America (Ecorse Plant), 51 N.L.R.B., 94;
Matter of General Motors Corporation (Detroit Diesel Engine Division), 51 N.L.R.B., 457;
Matter of Soss Manufacturing Company, 56 N.L.R.B., 348.

In 1945, the board again reversed itself in the proceedings in which this case originated.

Matter of Packard Motor Car Company, 61 N.L.R.B., 4.

The board held that Packard Motor Car Company foremen did constitute an appropriate unit for collective bargaining purposes when organized as an independent union. The extreme limit of range of opinion was reached when the board, in Matter of Jones and Laughlin Steel Corporation, supra, ruled that a union of supervisory employes, whether or not affiliated with a production workers' union, was an appropriate unit for collective bargaining purposes and that the members thereof were "employes" within the meaning of the Act.

ARGUMENT.

Legislative History of the Act.

In an attempt to determine the legislative intent of the Congress as to Section 2 (3) of the Act, which defines the term "employes", an examination has been made of the debates and proceedings in both houses during the enactment of this legislation. We submit that the record is bare of any direct reference to foremen and supervisory employes. In this connection, it is important to bear in mind that the Act was approved in July, 1935. At that time, foremen's organizations for collective bargaining purposes or foremen's unions were practically non-existent, and even more important, if they existed, they certainly were not "the causes of labor disputes burdening or obstructing interstate and foreign commerce."

We do not understand the respondent to claim that any direct reference is contained to foremen or supervisory employes in the Congressional proceedings attendant upon the passage of the Act. On the contrary, respondent's counsel has attempted to invoke the definition of "employes" in the Railway Labor Act, as interpreted by the Interstate Commerce Commission. It is significant that the exclusion of subordinate officials of carriers has been accomplished by judicial interpretation and in conformity with an established employer-employe pattern which existed at the time of the passage of the Act. So far as industry generally is concerned, exactly the reverse is true. Prior to 1940 and except for a few

specialized industries where a contrary pattern did exist, foremen and supervisory employes have been a part of and have spoken for management and have been distinguished by well-established custom from the worker at the bench and on the production line.

We repeat that the legislative record is bare of any hint that foremen and supervisory employes were intended to be included in the definition set forth in the Act and that the existing pattern of employee relationship in industry generally at the time of the passage of the Act excluded them from any such interpretation.

Decisions of the Board.

Respondent's brief on page 10 in the court below contains the following language:

> "In rejecting respondent's contention that the statutory term 'employee' should not be held to encompass such supervisors, the Board cited and relied upon its uniform and consistent prior holdings * * *."

We submit that the prior holdings of the board are neither uniform nor consistent. On the contrary, they are contradictory and inconsistent. In addition, since the change of position following the decision in the Maryland Dry Dock case, supra, the decisions of the board holding that foremen and supervsiory employes are "employes" within the meaning of the Act, are all two-to-one decisions. The only uniform and consistent holdings are those of dissenting Board Member Reilly.

The strained and tortured reasoning of respondent's counsel, in asserting that the decisions of the board have been uniform and consistent, is refuted by the opinion

of the board itself in Matter of L. A. Young Spring and Wire Corporation, 65 N.L.R.B., 298. We quote from the majority opinion of the board, which is signed by Chairman Herzog and Member Houston, as follows:

> "The board has, in the Maryland Dry Dock and following cases, construed Section 9 (b) as conferring upon the administrative discretion, not only to determine which of several units is appropriate in order to insure to employes the full benefit of their right to self organization and to collective bargaining, and otherwise to effectuate the policies of this act', but also to decide that some 'employes' may not constitute an appropriate unit in any circumstance. We are now persuaded that this interpretation is unjustified and should not govern future board rulings."

In the case of Jones & Laughlin Steel Corporation, 61 N.L.R.B., 4, the dissenting opinion of Member Reilly contains the following statement:

> "It is certain that we have discarded doctrines developed by this board in the last ten years for insuring complete freedom from management interference to workers in choosing their bargaining representative."

Chairman Herzog, in writing the majority opinion for the board in the instant case, did not hesitate to admit that the board's decisions had been contradictory and conflicting, for we find the following language in his opinion:

> "Two reversals in as many years (once in Maryland Dry Dock and once in the Packard representation case) are enough."

Even a cursory review of the decisions of the board involving the question of whether foremen and supervisory employes are "employes" within the meaning of the Act, reveals the shifting position of the board and the difficulty of the majority in any of the cases in arriving at a determination.

Let us review very briefly this series of "uniform and consistent prior holdings." In Union Collieries Coal Company, supra, and Godchaux Sugars, Inc., supra, the board held that supervisors were "employes" under the Act and that units of such supervisory employes constituted appropriate units for collective bargaining purposes. These decisions stimulated drives to organize foremen for collective bargaining purposes. The result was a threat to efficient production for war purposes. H. R. 2239 was introduced in the 78th Congress, which if enacted would have relieved employers of the legal obligation to bargain with unions of supervisory employes. In the midst of Congressional hearings on this bill, the decision in the Maryland Dry Dock case, supra, was announced. In this case, the prior minority opinion became the majority opinion and that opinion contains the following statement:

> "We are now persuaded that the benefits which supervisory employes might achieve through being certified as collective bargaining units, would be outweighed not only by the dangers inherent in the comingling of management and employes' functions, but also in its possible restrictive effect upon the organizational freedom of rank and file employes."

The principle announced in the Maryland Dry Dock decision, supra, was applied by the board in subsequent

cases for more than a year. But when the board announced its decision in the instant case, the erstwhile majority of the board again became a minority and the newly created majority executed another about-face. Today, the majority of the board has completed the circle of its findings. In the Packard Motor Car Company case, supra, the majority opinion was predicated upon the finding that the foremen involved exercised no real supervisory authority and were mere "traffic cops" in industry. This reasoning was abandoned in the L. A. Young Spring and Wire Corporation case, supra. Here the foremen involved were shown to possess and exercise very real supervisory authority. Nevertheless, the board found that they constituted an appropriate unit for collective bargaining purposes. It is in this decision that the board threw overboard its former decision that Section 9 (c) of the Act was permissive and held it to be mandatory. For the first time, the board held that it had no discretion to determine whether a given group of employes constituted an appropriate unit for collective bargaining purposes except for a matter of classification. In the Jones and Laughlin Steel Corporation case, supra, the board finally determined that a union of foremen was an appropriate unit under the Act even though such a union was affiliated with an organization of production workers.

Uniformity of decision by the majority of the board on this issue is non-existent. The board did adopt a position on this issue, thereafter reversed that position, and still later reverted to its original position and enlarged thereon.

Position of Foremen in Industry.

When a man is promoted from worker to foreman, he becomes a representative of management. He represents management at its initial point of contact with the worker. That has been the traditional position of the foreman in American industry. It is his position today. Upon this position is predicated the rewards, privileges and prestige of foremanship. It is the immediate goal of the worker with ambition and ability. The foreman is the first link in the management chain. This is true, regardless of the exact nature of his duties and whether he is employed in a small or great mass production enterprise. If the position of foreman is to retain its worth for the man occupying it, he must remain a part of management.

The foreman must remain an individual responsible to his employer. If his allegiance and loyalty are divided, his ability to represent his employer is lost. A foreman cannot maintain discipline over and obtain efficient production from those working under his direction, and, simultaneously, be subject to disciplinary action by any individual or group other than his employer or his superiors representing his employer. Any limitation or weakening of the sole responsibility of foremen to employers must result in the destruction of the value and, therefore, the rewards of the position.

Collective Bargaining by Foremen's Union.

When foremen are organized into groups for collective bargaining purposes, it is useless to blink at the fact that they thereby lose their individuality. They must conform to the pattern established by the union organization which bargains for them. Indeed, the primary purpose of collective bargaining is the strength of united action which neutralizes either the strength or weakness of the individual. Whether willingly or otherwise, the individual foreman, who is a member of a group exercising collective bargaining authority for him and his fellow members, must act with and be bound by the decisions and judgment of the group. It is inescapable that his allegiance and loyalty are divided and his ability to act as agent for his employer impaired, however honest he may be.

Throughout most of American industry today where the foreman is unorganized, in any dispute between the worker and management, the foreman sits beside his employer at the bargaining table, both figuratively and literally. His self-interest dictates this stand. When organized into collective bargaining units, his interest and loyalty are either divided or rest wholly with the production worker, whether his local and that of the production workers are affiliated with the same parent union or not.

It is urged that foremen are employes of the corporation or firm by which they are employed. This is, of course, true. It is likewise true that the president, vice-president, department heads and superintendents are

employes in the broad sense. Can it be argued that such employes collectively are appropriate units for collective bargaining purposes? Certainly each of them is a representative of and a part of management. The dividing line for the definition of the term "employee", as used in the Act, is the point dictated by logic and that point is the initial representation of management or the foreman.

Economic Relation Between Foremen and Their Employers.

It is argued that in the absence of collective action the individual foreman must bargain directly with his employer, and that his individual power is so small that it amounts to unilateral determination by the employer of terms and conditions of employment.

The first part of this statement is true. Throughout most of American industry today, the relationship is an individual one as between foremen and employer. Most foremen desire to continue on that basis. In 1944, a national poll was conducted by Dr. Claude Robinson of Opinion Research Corporation, Princeton, New Jersey, among foremen. This poll revealed that only thirteen percent of the foremen contacted either belonged to a union or were interested in joining a union. It is only on an individual basis that the worth of the position of foremen can be maintained and the truth of this is recognized by foremen themselves.

The conclusion that, in the absence of collective action, bargaining on a unilateral basis results, is not true in practice. No matter how selfish an employer may be, a proper differential must be maintained as to wages,

salaries and working conditions between the production worker and the foreman, if efficiency is to be maintained. Incentives must exist to induce men to progress from the ranks of the production worker to those of foremanship, and management, enlightened or selfish, must recognize and maintain worthwhile differentials in order to build efficient organizations.

Restrictions imposed by the Wage and Hour Act during the war undoubtedly produced, at least temporarily, many inequities with respect to compensation paid to foremen and supervisory employes as compared to that paid to production workers. This, in turn, produced discontent among supervisory employes in some economic areas and stimulated the effort to organize them for collective bargaining purposes. Universally, these conditions were corrected as soon as governmental regulations permitted.

If the authority of foremanship is not destroyed by collective bargaining among foremen, the economic strength of the individual foreman will remain and his worth as a part of management will be recognized and rewarded.

Experience of Foremen's Unions.

A portion of the preamble of the National Labor Relations Act recites its purpose in part as follows:

> "To diminish the causes of labor disputes burdening or obstructing interstate or foreign commerce."

It is proper to inquire whether the purpose of the Act has been accomplished or impaired by the most recent decisions of the board construing the term "employee" as

used in the act to include foremen and supervisory employes. It needs no citation of legal authority to recall the testimony of General H. H. Arnold before the House Military Affairs Committee, in 1943, on this point. No more serious indictment of any group of our civilian population was made during the entire war period. This was at the time when the production of essential war material was practically brought to a standstill through the "work stoppage" of foremen organized for collective bargaining purposes and exercising collective bargaining rights in the Detroit industrial area. Far from lessening the disastrous consequences growing from this activity, the enlarged definition of the term adopted by the board but served to increase the difficulties. The result predicted by Board Member Reilly in his series of dissenting opinions was demonstrated in practice. This result must and will continue so long as any segment of management is responsible to any source of authority other than higher levels of management.

Affiliation of Foremen's Unions With Production Workers' Unions.

The instant case presents an organization of foremen not affiliated with an organization of production workers. Since the decision of the board in this case, however, the board has determined that a unit of foremen directly affiliated with an organization which accepts production workers in its membership constitutes an appropriate unit for collective bargaining purposes.

Jones and Laughlin Steel Corporation, supra.

Likewise, since the origin of the instant case, the Government, after its seizure of the coal mines, entered into a contract with the United Mine Workers of America, wherein mine foremen's unions affiliated with the parent organization of miners are recognized for collective bargaining purposes.

While the precise facts involved in these cases are not before the court in the instant case, we feel that the general situation cannot be overlooked in arriving at a determination of the broad question before the court. It is of little value to argue that an organization made up exclusively of foremen and supervisory employes can remain independent. In the present day groupings of large organizations of workers on an industry level, this is extremely doubtful. A campaign to organize foremen is being carried on presently by both national labor union organizations representing and bargaining for production workers.

But experience has repeatedly demonstrated that whether independent or affiliated, in the event of labor disturbances and work stoppages or strikes, union members of one group cooperate with the activities of the other. Indeed, in the event of differences between higher levels of management and organizations of foremen exercising collective bargaining rights, such unions are dependent upon the cooperation of the leaders of the production workers' unions in order to make strikes or work stoppages effective. This type of cooperation has been practiced again and again in recent years in cases where officers of production workers' unions have issued instructions to their members not to replace or perform the

duties of foremen during work stoppages by the latter, even where there was no affiliation between the two groups. When foremen are organized into units affiliated with a parent organization consisting in part of production workers, the responsibility of foremen to higher management simply ceases to exist. When such organization is coupled with the closed shop, at the will of union leaders, anarchy in management results. Such a foreman is beholden to and must follow the dictates of top union officials.

CONCLUSION

It is respectfully submitted that petitioner's foremen are not "employes" within the meaning of the National Labor Relations Act.

Nothing in the legislative history of the Act lends credence to this interpretation, while economic conditions prevalent at the time of its enactment and the purpose of the Act dictate a negative answer.

The decisions of the board reveal a conflicting and contradictory series of opinions, the last of which sanctions organizations of foremen and supervisory employes for collective bargaining purposes without regard to the degree of authority exercised and whether or not affiliated with production workers' unions.

Foremen are a part of management and that relationship is destroyed if the individual foreman loses his identity and becomes a member of a union, thereby dividing his responsibility and loyalty.

It is respectfully submitted that the judgment of the Circuit Court of Appeals for the Sixth Circuit should be reversed.

HARRY P. JEFFREY,
IDDINGS, JEFFREY, WEISMAN & ROGERS,
Harries Bldg., Dayton 2, Ohio,
Attorneys for Foremen's League for Education and Association, and National Association of Foremen.

SUPREME COURT OF THE UNITED STATES

No. 658.—October Term, 1946.

Packard Motor Car Company, Petitioner, v. National Labor Relations Board.	On writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[March 10, 1947.]

Mr. Justice Jackson delivered the opinion of the Court.

The question presented by this case is whether foremen are entitled as a class to the rights of self-organization, collective bargaining, and other concerted activities as assured to employees generally by the National Labor Relations Act. The case grows out of conditions of the automotive industry, and so far as they are important to the legal issues here the facts are simple.

The Packard Motor Car Company employs about 32,000 rank and file workmen. Since 1937 they have been represented by the United Automobile Workers of America affiliated with the Congress of Industrial Organizations. These employees are supervised by approximately 1,100 employees of foreman rank consisting of about 125 "general foremen," 643 "foremen," 273 "assistant foremen," and 65 "special assignment men." Each general foreman is in charge of one or more departments, and under him in authority are foremen and their assistant foremen. Special assignment men are described as "troubleshooters."

The function of these foremen in general is typical of the duties of foremen in mass production industry generally. Foremen carry the responsibility for maintaining quantity and quality of production, subject, of course, to the overall control and supervision of the management.

Hiring is done by the labor relations department, as is the discharging and laying off of employees. But the foremen are provided with forms and with detailed lists of penalties to be applied in cases of violations of discipline, and initiate recommendations for promotion, demotion and discipline. All such recommendations are subject to the reviewing procedure concerning grievances provided in the collectively-bargained agreement between the Company and the rank and file union.

The foremen as a group are highly paid and, unlike the workmen, are paid for justifiable absence and for holidays, are not docked in pay when tardy, receive longer paid vacations, and are given severance pay upon release by the Company.

These foremen determined to organize as a unit of the Foremen's Association of America, an unaffiliated organization which represents supervisory employees exclusively. Following the usual procedure, after the Board had decided that "all general foremen, foremen, assistant foremen, and special assignment men employed by the Company at its plants in Detroit, Michigan, constitute a unit appropriate for the purposes of collective bargaining within the meaning of section 9 (b) of the Act,"[1] the Foremen's Association was certified as the bargaining representative. The Company asserted that foremen were not "employees" entitled to the advantages of the Labor Act, and refused to bargain with the union. After hearing on charge of unfair labor practice, the Board issued the usual cease and desist order. The Company resisted and challenged validity of the order. The judgment of the court below decreed its enforcement, and we granted certiorari. 328 U. S. xi.

The issue of law as to the power of the National Labor Relations Board under the National Labor Relations Act is simple and our only function is to determine whether the order of the Board is authorized by the statute.

[1] 61 N. L. R. B. 26.

The privileges and benefits of the Act are conferred upon employees, and § 2 (3) of the Act, so far as relevant, provides "The term 'employee' shall include any employee . . ." 49 Stat. 450. The point that these foremen are employees both in the most technical sense at common law as well as in common acceptance of the term, is too obvious to be labored. The Company, however, turns to the Act's definition of employer, which it contends reads foremen out of the employee class and into the class of employers. Section 2 (2) reads: "The term 'employer' includes any person acting in the interest of an employer, directly or indirectly . . ." 49 Stat. 450. The context of the Act, we think, leaves no room for a construction of this section to deny the organizational privilege to employees because they act in the interest of an employer. Every employee, from the very fact of employment in the master's business, is required to act in his interest. He owes to the employer faithful performance of service in his interest, the protection of the employer's property in his custody or control, and all employees may, as to third parties, act in the interests of the employer to such an extent that he is liable for their wrongful acts. A familiar example would be that of a truck driver for whose negligence the Company might have to answer.

The purpose of § 2 (2) seems obviously to render employers responsible in labor practices for acts of any persons performed in their interests. It is an adaptation of the ancient maxim of the common law, *respondeat superior*, by which a principal is made liable for the tortious acts of his agent and the master for the wrongful acts of his servants. Even without special statutory provision, the rule would apply to many relations. But Congress was creating a new class of wrongful acts to be known as unfair labor practices, and it could not be certain that the courts would apply the tort rule of *respondeat superior* to those derelictions. Even if it did, the problem of proof as applied to this kind of wrongs might easily be compli-

cated by questions as to the scope of the actor's authority and of variance between his apparent and his real authority. Hence, it was provided that in administering this act the employer, for its purposes, should be not merely the individual or corporation which was the employing entity, but also others, whether employee or not, who are "acting in the interest of an employer."

Even those who act for the employer in some matters, including the service of standing between management and manual labor, still have interests of their own as employees. Though the foreman is the faithful representative of the employer in maintaining a production schedule, his interest properly may be adverse to that of the employer when it comes to fixing his own wages, hours, seniority rights or working conditions. He does not lose his right to serve himself in these respects because he serves his master in others. And we see no basis in this Act whatever for holding that foremen are forbidden the protection of the Act when they take collective action to protect their collective interests.

The company's argument is really addressed to the undesirability of permitting foremen to organize. It wants selfless representatives of its interest. It fears that if foremen combine to bargain advantages for themselves, they will sometimes be governed by interests of their own or of their fellow foremen, rather than by the company's interest. There is nothing new in this argument. It is rooted in the misconception that because the employer has the right to wholehearted loyalty in the performance of the contract of employment, the employee does not have the right to protect his independent and adverse interest in the terms of the contract itself and the conditions of work. But the effect of the National Labor Relations Act is otherwise, and it is for Congress, not for us, to create exceptions or qualifications at odds with its plain terms.

Moreover, the company concedes that foremen have a right to organize. What it denies is that the statute compels it to recognize the union. In other words, it wants to be free to fight the foremen's union in the way that companies fought other unions before the Labor Act. But there is nothing in the Act which indicates that Congress intended to deny its benefits to foremen as employees, if they choose to believe that their interests as employees would be better served by organization than by individual competition.[2] *N. L. R. B.* v. *Skinner & Kennedy Stationery Co.*, 113 F. (2d) 667; see *N. L. R. B.* v. *Armour & Co.*, 154 F. (2d) 570, 574.

There is no more reason to conclude that the law prohibits foremen as a class from constituting an appropriate bargaining unit than there is for concluding that they are not within the Act at all. Section 9(b) of the Act confers upon the Board a broad discretion to determine appropriate units. It reads, "The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." 49 Stat. 453. Our power of review also is circumscribed by the provision that findings of the Board as to the facts, if supported by evidence, shall be conclusive. § 10 (e), 49 Stat. 454. So we have power only to determine whether there is substantial evidence to support the Board, or its order oversteps the law. *N. L. R. B.* v. *Link-Belt Co.*, 311 U. S. 584; *Pittsburgh Plate Glass Co.* v. *N. L. R. B.*, 313 U. S. 146.

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[2] If a union of vice presidents, presidents or others of like relationship to a corporation comes here claiming rights under this Act, it will be time enough then to point out the obvious and relevant differences between the 1100 foremen of this company and corporate officers elected by the board of directors.

There is clearly substantial evidence in support of the determination that foremen are an appropriate unit by themselves and there is equal evidence that, while the foremen included in this unit have different degrees of responsibility and work at different levels of authority, they have such a common relationship to the enterprise and to other levels of workmen that inclusion of all such grades of foremen in a single unit is appropriate. Hence the order insofar as it depends on facts is beyond our power of review. The issue as to what unit is appropriate for bargaining is one for which no absolute rule of law is laid down by statute, and none should be by decision. It involves of necessity a large measure of informed discretion and the decision of the Board, if not final, is rarely to be disturbed. While we do not say that a determination of a unit of representation cannot be so unreasonable and arbitrary as to exceed the Board's power, we are clear that the decision in question does not do so. That settled, our power is at an end.

We are invited to make a lengthy examination of views expressed in Congress while this and later legislation was pending to show that exclusion of foremen was intended. There is, however, no ambiguity in this Act to be clarified by resort to legislative history, either of the Act itself or of subsequent legislative proposals which failed to become law.

Counsel also would persuade us to make a contrary interpretation by citing a long record of inaction, vacillation and division of the National Labor Relations Board in applying this Act to foremen.[3] If we were obliged to depend upon administrative interpretation for light in finding the meaning of the statute, the inconsistency of the Board's decisions would leave us in the dark. But

[3] The Board had held that supervisory employees may organize in an independent union, *Union Collieries Coal Co.*, 41 N. L. R. B. 961, 44 N. L. R. B. 165; and in an affiliated union, *Godchaux Sugars, Inc.*, 44 N. L. R. B. 874. Then it held that there was no unit appropriate

there are difficult questions of policy involved in these cases which, together with changes in Board membership, account for the contradictory views that characterize their history in the Board. Whatever special questions there are in determining the appropriate bargaining unit for foremen are for the Board, and the history of the issue in the Board shows the difficulty of the problem committed to its discretion. We are not at liberty to be governed by those policy considerations in deciding the naked question of law whether the Board is now, in this case, acting within the terms of the statute.

It is also urged upon us most seriously that unionization of foremen is from many points bad industrial policy, that it puts the union foreman in the position of serving two masters, divides his loyalty and makes generally for bad relations between management and labor. However we might appraise the force of these arguments as a policy matter, we are not authorized to base decision of a question of law upon them. They concern the wisdom of the legislation; they cannot alter the meaning of otherwise plain provisions.

The judgment of enforcement is

Affirmed.

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to the organization of supervisory employees. *Maryland Drydock Co.*, 49 N. L. R. B. 733; *Boeing Aircraft Co.*, 51 N. L. R. B. 67; *Murray Corp. of America*, 51 N. L. R. B. 94; *General Motors Corp.*, 51 N. L. R. B. 457. In this case, 61 N. L. R. B. 4, 64 N. L. R. B. 1212; in *L. A. Young Spring & Wire Corp.*, 65 N. L. R. B. 298; *Jones & Laughlin Steel Corp.*, 66 N. L. R. B. 386, 71 N. L. R. B. 1261; and in *California Packing Corp.*, 66 N. L. R. B. 1461, the Board re-embraced its earlier conclusions with the same progressive boldness it had shown in the *Union Collieries* and *Godchaux Sugars* cases. In none of this series of cases did the Board hold that supervisors were not employees. See *Soss Manufacturing Co.*, 56 N. L. R. B. 348.

SUPREME COURT OF THE UNITED STATES

No. 658.—October Term, 1946.

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[March 10, 1947.]

Mr. Justice Douglas, with whom The Chief Justice and Mr. Justice Burton concur, dissenting.

First. Over thirty years ago Mr. Justice Brandeis, while still a private citizen, saw the need for narrowing the gap between management and labor, for allowing labor greater participation in policy decisions, for developing an industrial system in which cooperation rather than coercion was the dominant characteristic.[1] In his view, these were measures of therapeutic value in dealing with problems of industrial unrest or inefficiency.

The present decision may be a step in that direction. It at least tends to obliterate the line between management and labor. It lends the sanctions of federal law to unionization at all levels of the industrial hierarchy. It tends to emphasize that the basic opposing forces in

[1] "The greater productivity of labor must not only be attainable, but attainable under conditions consistent with the conservation of health, the enjoyment of work, and the development of the individual. The facts in this regard have not been adequately established. In the task of ascertaining whether proposed conditions of work do conform to these requirements, the laborer should take part. He is indeed a necessary witness. Likewise in the task of determining whether in the distribution of the gain in productivity justice is being done to the worker, the participation of representatives of labor is indispensable for the inquiry which involves essentially the exercise of judgment." Brandeis, Business—A Profession, pp. 52–53.

industry are not management and labor but the operating group on the one hand and the stockholder and bondholder group on the other. The industrial problem as so defined comes down to a contest over a fair division of the gross receipts of industry between these two groups. The struggle for control or power between management and labor becomes secondary to a growing unity in their common demands on ownership.

I do not believe this is an exaggerated statement of the basic policy questions which underly the present decision. For if foremen are "employees" within the meaning of the National Labor Relations Act, so are vice-presidents, managers, assistant managers, superintendents, assistant superintendents—indeed, all who are on the payroll of the company, including the president; all who are commonly referred to as the management, with the exception of the directors. If a union of vice-presidents applied for recognition as a collective bargaining agency, I do not see how we could deny it and yet allow the present application. But once vice-presidents, managers, superintendents, foremen all are unionized, management and labor will become more of a solid phalanx than separate factions in warring camps. Indeed, the thought of some labor leaders that if those in the hierarchy above the workers are unionized, they will be more sympathetic with the claims of those below them, is a manifestation of the same idea.[2]

I mention these matters to indicate what tremendously important policy questions are involved in the present decision. My purpose is to suggest that if Congress, when it enacted the National Labor Relations Act, had in mind such a basic change in industrial philosophy, it would have left some clear and unmistakable trace of that purpose. But I find none.

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[2] The Foreman Abdicates, XXXII Fortune, No. 3, p. 150, 152; Levenstein, Labor Today and Tomorrow (1946) ch. VII.

Second. "Employee" is defined to include "any" employee. § 2 (3), 49 Stat. 449, 450, 29 U. S. C. § 152. If we stop there, foremen are included as are all employees from the president on down. But we are not warranted in stopping there. The term "employee" must be considered in the context of the Act. *National Labor Relations Board* v. *Hearst*, 322 U. S. 111, 124; *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 191. When it is so considered it does not appear to be used in an all-embracing sense. Rather, it is used in opposition to the term "employer". An "employer" is defined to include "any person acting in the interest of an employer". § 2 (2). The term "employer" thus includes some employees. And I find no evidence that one personnel group may be both employers and employees within the meaning of the Act. Rather, the Act on its face seems to classify the operating group of industry into two classes; what is included in one group is excluded from the other.

It is not an answer to say that the two statutory groups are not exclusive because every "employee" while on duty—whether driving a truck or stoking a furnace or operating a lathe—is "acting in the interest" of his employer and is then an "employer" in the statutory sense. The Act was not declaring a policy of vicarious responsibility of industry. It was dealing solely with labor relations. It put in the employer category all those who acted for management not only in formulating but also in executing its labor policies.[3]

Foremost among the latter were foremen. Trade union history shows that foremen were the arms and legs of man-

[3] Daykin, The Status of Supervisory Employees under the National Labor Relations Act, 29 Iowa L. Rev. 297; Rosenfarb, The National Labor Policy (1940) pp. 54–56, 116–120; Twentieth Century Fund, How Collective Bargaining Works (1942) pp. 512–514, 547, 557–558, 628, 780.

agement in executing labor policies. In industrial conflicts they were allied with management. Management indeed commonly acted through them in the unfair labor practices which the Act condemns.[4] When we upheld the imposition of the sanctions of the Act against management, we frequently relied on the acts of foremen through whom management expressed its hostility to trade unionism.[5]

Third. The evil at which the Act was aimed was the failure or refusal of industry to recognize the right of workingmen to bargain collectively. In § 1 of the Act Congress noted that such an attitude on the part of industry led "to strikes and other forms of industrial strife or unrest" so as to burden or obstruct interstate commerce. We know from the history of that decade that the frustrated efforts of workingmen, of laborers, to organize led to strikes, strife, and unrest. But we are pointed to no instances where foremen were striking; nor are we advised that managers, superintendents, or vice-presidents were doing so.[6]

Indeed, the problems of those in the supervisory categories of management did not seem to have been in the

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[4] See cases collected in Daykin, op. cit. *supra*, note 3, pp. 298–299.

[5] *International Association of Machinists* v. *National Labor Rel. Bd.*, 311 U. S. 72, 79–80; *Heinz Co.* v. *National Labor Rel. Bd.*, 311 U. S. 514, 520–521.

[6] It is true that for many years some unions included supervisory employees, Beatrice and Sydney Webb, Industrial Democracy (1902) p. 546, fn. 2; Union Membership and Collective Bargaining by Foremen, U. S. Department of Labor Bull. No. 745 (1943); Report of Panel of War Labor Board in Disputes Involving Supervisors (1945) IX; Twentieth Century Fund, op. cit. *supra*, note 3, pp. 67, 216; Northrup, Unionization of Foremen, 21 Harv. Bus. Rev. 496. But organization of foremen on a broad scale is a development of the last few years. Daykin, op. cit. *supra*, note 3, p. 314; Rosenfarb, Foremen on the March, 7 Fed. Bar. J. 168; Note, 59 Harv. L. Rev. 606, 607; Comment, 55 Yale L. J. 754, 756; Foremen's Unions, IX Advanced Management Quarterly J. 110.

consciousness of Congress. Section 1 of the Act refers to "wage rates", "wage earners", "workers". There is no phrase in the entire Act which is descriptive of those doing supervisory work. Section 2 (3) exempts from the term "employee" any "agricultural laborer". But if "employee" includes a foreman, it would be most strange to find Congress exempting "agricultural laborers", but not "agricultural foremen". The inference is strong that since it exempted only agricultural "laborers", it had no idea that agricultural "foremen" were under the Act.

If foremen were to be included as employees under the Act, special problems would be raised,—important problems relating to the unit in which the foremen might be represented. Foremen are also under the Act as employers. That dual status creates serious problems. An act of a foreman, if attributed to the management, constitutes an unfair labor practice; the same act may be part of the foreman's activity as an employee. In that event the employer can only interfere at his peril.[7] The complications of dealing with the problems of supervisory employees strongly suggest that if Congress had planned to include them in its project, it would have made some special provision for them. But we find no trace of a suggestion that when Congress came to consider the units appropriate for collective bargaining,[8] it was aware that groups of employees might have conflicting loyalties. Yet that would have been one of the most important and con-

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[7] Cf. *Jones and Laughlin Steel Corp.* v. *National Labor Rel. Bd.*, 146 F. 2d 833; Comment, 55 Yale L. J. 754, 767–774; Rosenfarb, — op. cit., *supra*, note 6.

[8] Section 9 (b) of the Act provides: "The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

spicuous problems if foremen were to be included. The failure of Congress to formulate a policy respecting the peculiar and special problems of foremen suggests an absence of purpose to bring them under the Act. And the notion is hard to resist that the very absence of a declaration by Congress of its policy respecting foremen is the reason the Board has been so much at large in the treatment of the problem under the Act. See the cases collected in note 3 of the opinion of the Court.

Fourth. When we turn from the Act to the legislative history, we find no trace of Congressional concern with the problems of supervisory personnel. The reports and debates are barren of any reference to them, though they are replete with references to the function of the legislation in protecting the interests of "laborers" and "workers".[2]

Fifth. When we turn to other related legislation, we find that when Congress desired to include managerial officials or supervisory personnel in the category of employees, it did so expressly. The Railway Labor Act of 1926, 44 Stat. 577, 46 U. S. C. § 151, defines "employee" to include "subordinate official". The Merchant Marine Act of 1936, 52 Stat. 953, 46 U. S. C. § 1101 *et seq.*, which deals with maritime labor relations as a supplement to the National Labor Relations Act (see 46 U. S. C. § 1252) defines "employee" to include "subordinate official". 46 U. S. C. § 1253 (c). And the Social Security Act, 49 Stat. 620, 647, 42 U. S. C. § 1301, includes an

[2] See H. Rep. No. 969, 74th Cong., 1st Sess.; H. Rep. No. 972, 74th Cong., 1st Sess.; H. Rep. No. 1147, 74th Cong., 1st Sess.; S. Rep. No. 573, 74th Cong., 1st Sess., pp. 6–7; Hearings, Senate Comm. on Educ. and Labor on S. 2926, 73d Cong., 2d Sess.; Hearings, House Comm. on Labor on H. R. 6288, 74th Cong., 1st Sess.; Hearings, Senate Comm. on Educ. and Labor on S. 1958, 74th Cong., 1st Sess.; 79 Cong. Rec. 2371, 7365, 7648, 7668, 8537, 9676, 9713, 9736, 10320.

officer of a corporation in the term employee.[10] The failure of Congress to do the same when it wrote the National Labor Relations Act has some significance, especially where the legislative history is utterly devoid of any indication that Congress was concerned with the collective bargaining problems of supervisory employees.

Sixth. The truth of the matter is, I think, that when Congress passed the National Labor Relations Act in 1935, it was legislating *against* the activities of foremen, not on their behalf. Congress was intent on protecting the right of free association—the right to bargain collectively—by the great mass of workers, not by those who were in authority over them and enforcing oppressive industrial policies. Foremen were instrumentalities of those industrial policies. They blocked the wage earners' path to fair collective bargaining. To say twelve years later that foremen were treated as the victims of that anti-labor policy seems to me a distortion of history.

If we were to decide this case on the basis of policy, much could be said to support the majority view.[11] But I am convinced that Congress never faced those policy issues when it enacted this legislation. I am sure that those problems were not in the consciousness of Congress. A

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[10] Cf. Federal Employers Liability Act, 35 Stat. 65, as amended, 45 U. S. C. § 51, under which the term "any employee of a carrier" has been applied to foremen. *Owens* v. *Union Pac. R. Co.*, 319 U. S. 715; *Ellis* v. *Union Pac. R. Co.*, 329 U. S. —.

[11] Daykin, op. cit. *supra*, note 3, p. 395; *Rosenfarb*, op. cit. *supra*, note 6; Gartenhaus, The Foreman goes Union, 113 New Republic 563; Comment 55 Yale L. J. 754; Hearings, House Comm. on Military Affairs on Bills relating to the Full Utilization of Manpower, 78th Cong., 1st Sess., p. 899; Northrup, The Foreman's Association of America, 23 Harv. Bus. Rev. 187; cf. American Management Association, Relation Between Management and Foremen in American Industry (1944); *Id.* The Foreman in Labor Relations (1944); *Id.* Should Management be Unionized? (1945).

decision on these policy matters cuts deep into our industrial life. It has profound implications throughout our economy. It involves a fundamental change in much of the thinking of the nation on our industrial problems. The question is so important that I cannot believe Congress legislated unwittingly on it. Since what Congress wrote is consistent with a restriction of the Act to workingmen and laborers, I would leave its extension over supervisory employees to Congress.

I have used the terms foremen and supervisory employees synonymously. But it is not the label which is important; it is whether the employees in question represent or act for management on labor policy matters. Thus one might be a supervisory employee without representing management in those respects. And those who are called foremen may perform duties not substantially different from those of skilled laborers.

What I have said does not mean that foremen have no right to organize for collective bargaining. The general law recognizes their right to do so. See *American Steel Foundries* v. *Tri-City Council*, 257 U. S. 184, 209; *Texas & N. O. R. Co.* v. *Railway Clerks*, 281 U. S. 548, 570. And some States have placed administrative machinery and sanctions behind that right.[12] But as I read the Federal Act, Congress has not yet done so.

MR. JUSTICE FRANKFURTER agrees with this opinion except the part marked "*First*" as to which he expresses no view.

[12] The state laws are discussed in Northrup, The Foremen's Association of America, 23 Harv. Bus. Rev. 187, 196–200.